

CHAPTER 149A

MORTUARY SCIENCE; DISPOSITION OF DEAD BODIES

149A 01	Purpose and scope	149A 63	Professional cooperation
149A 02	Definitions	149A 70	Business practices
149A 03	Duties of commissioner	149A 71	Funeral industry practices, price disclosures
149A 04	Enforcement	149A 72	Funeral industry practices, misrepresentations
149A 05	Correction orders	149A 73	Funeral industry practices, required purchase of funeral goods or funeral services
149A 06	Administrative penalty orders	149A 74	Funeral industry practices, services provided without prior approval
149A 07	Injunctive relief	149A 75	Funeral industry practices, retention of documents
149A 08	Cease and desist order	149A 76	Funeral industry practices, comprehension of disclosures
149A 09	Denial, refusal to reissue, revocation, suspension, limitation of license or permit	149A 80	Death, right to control and duty of disposition
149A 10	Additional remedies	149A 81	Anatomical gifts
149A 11	Publication of disciplinary actions	149A 90	Death, registration and removal from place of death
149A 20	License to practice mortuary science	149A 91	Preparation of body
149A 30	Reciprocal licensing	149A 92	Preparation and embalming room
149A 40	Renewal of license to practice mortuary science	149A 93	Transportation of dead human bodies
149A 50	License to operate a funeral establishment	149A 94	Final disposition
149A 51	Renewal of license to operate a funeral establishment	149A 95	Crematories and cremation
149A 52	License to operate a crematory	149A 96	Disinterment and reinterment
149A 53	Renewal of license to operate crematory	149A 97	Preneed arrangements
149A 60	Prohibited conduct		
149A 61	Complaints, reporting obligations, form, response		
149A 62	Immunity, reporting		

149A.01 PURPOSE AND SCOPE.

Subdivision 1 **Purpose.** This chapter regulates the removal, preparation, transportation, arrangements for disposition, and final disposition of dead human bodies for purposes of public health and protection of the public.

Subd. 2. **Scope.** In Minnesota no person shall, without being licensed by the commissioner of health:

- (1) take charge of, remove from the place of death, or transport a dead human body;
- (2) prepare a dead human body for final disposition, in any manner; or
- (3) arrange, direct, or supervise a funeral, memorial service, or graveside service.

Subd. 3. **Exceptions to licensure.** (a) Except as otherwise provided in this chapter, nothing in this chapter shall in any way interfere with the duties of:

- (1) an officer of any public institution;
- (2) an officer of a medical college, county medical society, anatomical association, or accredited college of mortuary science;
- (3) a donee of an anatomical gift;
- (4) a person engaged in the performance of duties prescribed by law relating to the conditions under which unclaimed dead human bodies are held subject to anatomical study;
- (5) authorized personnel from a licensed ambulance service in the performance of their duties;
- (6) licensed medical personnel in the performance of their duties; or
- (7) the coroner or medical examiner in the performance of the duties of their offices.

(b) This chapter does not apply to or interfere with the customs or rites of any culture or recognized religion in the final disposition of their dead, to the extent that the provisions of this chapter are inconsistent with the customs or rites.

(c) Noncompensated persons related by blood, adoption, or marriage to a decedent who chose to remove a body of a decedent from the place of death, transport the body, prepare the

body for disposition, except embalming, or arrange for final disposition of the body are not required to be licensed, provided that all actions are in compliance with this chapter.

(d) Noncompensated persons acting pursuant to the lawful directive of a decedent who remove a body of the decedent from the place of death, transport the body, prepare the body for disposition, except embalming, or arrange for final disposition of the body are not required to be licensed, provided that all actions are otherwise in compliance with this chapter.

(e) Persons serving internships pursuant to section 149A.20, subdivision 6, or students officially registered for a practicum through an accredited college or university or a college of funeral service education accredited by the American Board of Funeral Service Education are not required to be licensed, provided that the persons or students act under the direct and exclusive supervision of a person holding a current license to practice mortuary science in Minnesota.

(f) Notwithstanding this subdivision, nothing in this section shall be construed to prohibit an institution or entity from establishing, implementing, or enforcing a policy that permits only persons licensed by the commissioner to remove or cause to be removed a dead body or body part from the institution or entity

History: 1997 c.215 s 5

149A.02 DEFINITIONS.

Subdivision 1. **Scope.** For purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 2. **Alternative container.** "Alternative container" means a nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of dead human bodies and is made of fiberboard, pressed-wood, composition materials, with or without an outside covering, or other like materials.

Subd. 3. **Arrangements for disposition.** "Arrangements for disposition" means any action normally taken by a funeral provider in anticipation of or preparation for the entombment, burial in a cemetery, or cremation of a dead human body.

Subd. 4. **Cash advance item.** "Cash advance item" means any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items include, but are not limited to, cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or singers, obituary notices, gratuities, and death certificates.

Subd. 5. **Casket.** "Casket" means a rigid container which is designed for the encasement of a dead human body and is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

Subd. 6. **Commissioner.** "Commissioner" means the Minnesota commissioner of health.

Subd. 7. **Cremated remains.** "Cremated remains" means the postcremation remains of a dead human body.

Subd. 8. **Cremated remains container.** "Cremated remains container" means a receptacle in which postcremation remains are placed

Subd. 9. **Cremation.** "Cremation" means the reduction of a dead human body to essential elements through direct exposure to intense heat and flame and the repositioning or movement of the body during the process to facilitate reduction, the processing of the remains after removal from the cremation chamber, placement of the processed remains in a cremated remains container, and release of the cremated remains to an appropriate party.

Subd. 10. **Cremation chamber.** "Cremation chamber" means the enclosed space within which the cremation of a dead human body is performed.

Subd. 11. **Cremation container.** "Cremation container" means a combustible, closed container resistant to the leakage of bodily fluids into which a dead human body is placed prior to insertion into a cremation chamber for cremation.

Subd. 12. **Crematory.** "Crematory" means a building or structure containing one or more cremation chambers or retorts for the cremation of dead human bodies or any person that performs cremations.

MINNESOTA STATUTES 1998

1259

MORTUARY SCIENCE; DISPOSITION OF DEAD BODIES 149A.02

Subd. 13. **Direct cremation.** "Direct cremation" means a disposition of a dead human body by cremation, without formal viewing, visitation, or ceremony with the body present.

Subd. 14. **Disciplinary action.** "Disciplinary action" means any action taken by the commissioner against any person subject to regulation under this chapter for the violation of or the threatened violation of any law, rule, order, stipulation agreement, settlement, compliance agreement, license, or permit adopted, issued, or enforced by the commissioner.

Subd. 15. **Embalming.** "Embalming" means the process of disinfecting and preserving a dead human body by chemically treating the body to reduce the presence and growth of organisms, to retard organic decomposition, and to restore an acceptable physical appearance.

Subd. 16. **Final disposition.** "Final disposition" means the entombment, burial in a cemetery, or cremation of a dead human body.

Subd. 17. **Funeral association.** "Funeral association" means a cooperative association that sells or offers to sell funeral goods or services to its members.

Subd. 18. **Funeral ceremony.** "Funeral ceremony" means a service or rite commemorating the deceased with the body present.

Subd. 19. **Funeral director.** "Funeral director" means any person who, for compensation, arranges, directs, or supervises funerals, memorial services, or graveside services, or engages in the business or practice of preparing dead human bodies for final disposition by means other than embalming.

Subd. 20. **Funeral establishment.** "Funeral establishment" means any place or premise devoted to or used in the holding, care, or preparation of a dead human body for final disposition or any place used as the office or place of business of any person that provides funeral goods or services to the public.

Subd. 21. **Funeral goods.** "Funeral goods" means the goods which are sold or offered for sale directly to the public for use in connection with funeral services.

Subd. 22. **Funeral provider.** "Funeral provider" means any person that sells or offers to sell funeral goods or funeral services to the public.

Subd. 23. **Funeral services.** "Funeral services" means any services which may be used to: (1) care for and prepare dead human bodies for burial, cremation, or other final disposition; and (2) arrange, supervise, or conduct the funeral ceremony or the final disposition of dead human bodies.

Subd. 24. **Graveside service.** "Graveside service" means a service or rite, conducted at the place of interment, commemorating the deceased with the body present.

Subd. 25. **Immediate burial.** "Immediate burial" means a disposition of a dead human body by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

Subd. 26. **Intern.** "Intern" means an individual that has met the educational and testing requirements for a license to practice mortuary science in Minnesota, has registered with the commissioner of health, and is engaged in the practice of mortuary science under the direction and supervision of a currently licensed Minnesota mortuary science practitioner.

Subd. 27. **Licensee.** "Licensee" means any person that has been issued a license to practice mortuary science, to operate a funeral establishment, or to operate a crematory by the Minnesota commissioner of health.

Subd. 28. **Memorial service.** "Memorial service" means a ceremony or rite commemorating the deceased without the body present.

Subd. 29. **Mortician.** "Mortician" means any person who, for compensation, practices the art of embalming and arranges, directs, or supervises funerals, memorial services, or graveside services, or engages in the business or practice of preparing dead human bodies for final disposition.

Subd. 30. **Mortuary science.** "Mortuary science" means the study and practice of preparing dead human bodies for final disposition and providing funeral services. Mortuary science includes any conduct or action associated with the removal, preparation, transportation, arrangements for disposition, or final disposition of dead human bodies, including the actions and duties of a mortician or a funeral director.

Subd. 31. **Outer burial container.** "Outer burial container" means any container which is designed for placement in the grave around a casket or alternative container including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

Subd. 32. **Person.** "Person" means an individual or a firm, corporation, limited liability company, partnership, association, or other legal entity.

Subd. 33. **Practicum student.** "Practicum student" means a person officially registered for a practicum through an accredited college or university or a college of funeral service education accredited by the American Board of Funeral Service Education.

Subd. 34. **Preparation of the body.** "Preparation of the body" means embalming of the body or such items of care as washing, disinfecting, shaving, positioning of features, restorative procedures, care of hair, application of cosmetics, dressing, and casketing.

Subd. 35. **Processing.** "Processing" means the removal of foreign objects and the reduction of the cremated remains by mechanical means including, but not limited to, grinding, crushing, or pulverizing, to a granulated appearance appropriate for final disposition.

Subd. 36. **Professional services.** "Professional services" means the basic services of the funeral director or mortician and staff that are furnished by the funeral provider in arranging final disposition. The services include, but are not limited to, conducting the arrangement conference; planning visitations and the funeral, memorial service, or graveside service; arranging for final disposition by securing, preparing, and filing necessary permits and documents; and placing obituary notices.

Subd. 37. **Public transportation.** "Public transportation" means all manner of transportation via common carrier available to the general public including airlines, buses, railroads, and ships. For purposes of this chapter, a livery service providing transportation to private funeral establishments or crematories is not public transportation.

Subd. 38. **Transportation costs.** "Transportation costs" means all costs associated with the use of the vehicle used for the initial transfer of the deceased, the funeral coach, funeral sedans, the flower car, any service or utility vehicles, and public transportation.

Subd. 39. **Universal precautions.** "Universal precautions" means the universal blood and body fluid precautions recommended by the United States Public Health Service, Centers for Disease Control, to prevent transmission of blood borne and body fluid borne infectious diseases.

Subd. 40. **Use of facilities.** "Use of facilities" means the provision of a chapel or room for visitation, provision of a chapel or room for the funeral or memorial service, provision of facilities for parking, or provision of office space for administrative or planning purposes.

History: 1997 c 215 s 6

149A.03 DUTIES OF COMMISSIONER.

The commissioner shall:

- (1) enforce all laws and adopt and enforce rules relating to the:
 - (i) removal, preparation, transportation, arrangements for disposition, and final disposition of dead human bodies;
 - (ii) licensure and professional conduct of funeral directors, morticians, and interns;
 - (iii) licensing and operation of a funeral establishment; and
 - (iv) licensing and operation of a crematory;
- (2) provide copies of the requirements for licensure and permits to all applicants;
- (3) administer examinations and issue licenses and permits to qualified persons and other legal entities;
- (4) maintain a record of the name and location of all current licensees and interns;
- (5) perform periodic compliance reviews and premise inspections of licensees;
- (6) accept and investigate complaints relating to conduct governed by this chapter;
- (7) maintain a record of all current preneed arrangement trust accounts;
- (8) maintain a schedule of application, examination, permit, and licensure fees, initial and renewal, sufficient to cover all necessary operating expenses;

(9) educate the public about the existence and content of the laws and rules for mortuary science licensing and the removal, preparation, transportation, arrangements for disposition, and final disposition of dead human bodies to enable consumers to file complaints against licensees and others who may have violated those laws or rules;

(10) evaluate the laws, rules, and procedures regulating the practice of mortuary science in order to refine the standards for licensing and to improve the regulatory and enforcement methods used; and

(11) initiate proceedings to address and remedy deficiencies and inconsistencies in the laws, rules, or procedures governing the practice of mortuary science and the removal, preparation, transportation, arrangements for disposition, and final disposition of dead human bodies.

History: 1997 c 215 s 7

149A.04 ENFORCEMENT.

Subdivision 1. **General authority.** The provisions of this chapter and all laws, now in force or later enacted, rules, orders, stipulation agreements, settlements, compliance agreements, licenses, and permits adopted or issued for the regulation of the removal, preparation, transportation, arrangements for disposition, or final disposition of dead human bodies or for the regulation of the practice of mortuary science may be enforced under this section.

Subd. 2. **Inspections.** The commissioner or a designee of the commissioner shall conduct initial licensure inspections and corrective order reinspections. As a condition of continued licensure, compliance reviews or premises inspections of licensees shall be conducted by the commissioner or a designee of the commissioner at least biennially. A compliance review or an inspection of the premises of any person subject to regulation under this chapter may also be conducted when the commissioner reasonably suspects that there may be a violation or a threat of a violation of any law now in force or later enacted, rule, order, stipulation agreement, settlement, compliance agreement, license, or permit issued by the commissioner. When possible, all inspections and compliance reviews shall be conducted without prior notice to the subject of the inspection or review and shall be performed in the presence of the subject of the inspection or review or an authorized representative of the subject of the inspection or review.

Subd. 3. **Access to information and property.** The commissioner or a designee of the commissioner, upon presentation of credentials, may:

(1) examine and copy any relevant books, papers, records, memoranda, or data of any person subject to regulation under this chapter; and

(2) enter upon any property, public or private, for the purpose of taking any action authorized under this chapter or rules, orders, stipulation agreements, settlements, compliance agreements, licenses, or permits adopted or issued by the commissioner, including obtaining information from a person that has a duty to provide information under this chapter or conducting inspections or investigations.

Subd. 4. **Subpoena power.** The commissioner may, as part of an investigation, issue subpoenas to require the attendance and testimony of witnesses and production of books, records, correspondence, and other information relevant to any matter involved in the investigation. The commissioner or the commissioner's designee may administer oaths to witnesses or take their affirmation. The subpoenas may be served upon any person named therein anywhere in the state by any person authorized to serve subpoenas or other processes in civil actions of the district courts. If a person to whom a subpoena is issued does not comply with the subpoena, the commissioner may apply to the district court in any district and the court may order compliance with the subpoena. Failure to obey the order of the court may be punished as contempt of court.

Subd. 5. **Data on investigations and disciplinary actions.** Data relating to any disciplinary measures or actions anticipated or taken by the commissioner are classified as follows:

(1) data on persons other than individuals are civil investigative data under section 13.39;

(2) data on individuals are licensing data under section 13.41; and

(3) data on individuals who submit complaints to the commissioner regarding activities or practices regulated under this chapter are confidential data on individuals while an investigation is active and private data on individuals when an investigation becomes inactive.

Subd. 6. **Cooperation with other authorities.** The commissioner shall encourage and promote cooperation between and among other state and federal authorities where there is concurrent or overlapping enforcement or licensing jurisdiction.

History: 1997 c 215 s 8

149A.05 CORRECTION ORDERS.

Subdivision 1. **Authorization.** The commissioner may issue correction orders that require a person subject to regulation under this chapter to correct violations of this chapter or rules, orders, stipulation agreements, settlements, compliance agreements, licenses, and permits adopted or issued by the commissioner

Subd. 2. **Contents of order.** The correction order must include:

- (1) a concise statement of the deficiencies alleged to constitute the violation;
 - (2) a reference to the section of law, rule, order, stipulation agreement, settlement, compliance agreement, license, or permit that has been violated;
 - (3) a statement of the time by and the manner in which the violation must be corrected;
- and
- (4) a statement of the right to request a hearing under sections 14.57 to 14.62.

Subd. 3. **Request for hearing; hearing; and final order.** A request for hearing must be in writing, delivered to the commissioner by certified mail within 20 calendar days after the receipt of the correction order, and specifically state the reasons for seeking review of the order. The commissioner must initiate a hearing within 30 calendar days from the date of receipt of the written request for hearing. The hearing shall be conducted pursuant to the contested case procedures in sections 14.57 to 14.62. No earlier than ten calendar days after and within 30 calendar days of receipt of the presiding administrative law judge's report, the commissioner shall issue a final order modifying, vacating, or making permanent the correction order as the facts require. If, within 20 calendar days of receipt of the correction order, the person that is the subject of the order fails to request a hearing in writing, the correction order becomes the final order of the commissioner.

Subd. 4. **Review of final order.** A judicial review of the final order issued by the commissioner subsequent to a contested case hearing may be requested in the manner prescribed in sections 14.63 to 14.69. Failure to request a contested case hearing pursuant to subdivision 3 shall constitute a waiver of the right to further agency or judicial review of the final order.

Subd. 5. **Reinspections and effect of noncompliance.** If upon reinspection, or in the determination of the commissioner, it is found that any deficiency specified in a correction order has not been corrected by the person that is subject to the correction order, that person or entity is in noncompliance. The commissioner shall issue a notice of noncompliance and may impose any additional remedy available under this chapter.

History: 1997 c 215 s 9

149A.06 ADMINISTRATIVE PENALTY ORDERS.

Subdivision 1. **Authorization.** The commissioner may issue an order requiring violations to be corrected and administratively assessing monetary penalties for violations of this chapter or rules, orders, stipulation agreements, settlements, compliance agreements, licenses, and permits adopted, enforced, or issued by the commissioner.

Subd. 2. **Contents of order.** An order assessing an administrative penalty under this section must include:

- (1) a concise statement of the facts alleged to constitute a violation;
- (2) a reference to the section of law, rule, order, stipulation agreement, settlement, compliance agreement, license, or permit that has been violated;
- (3) a statement of the amount of the administrative penalty to be imposed and the factors upon which the penalty is based; and

MINNESOTA STATUTES 1998

1263

MORTUARY SCIENCE; DISPOSITION OF DEAD BODIES 149A.06

(4) a statement of the right to request a hearing pursuant to sections 14.57 to 14.62.

Subd. 3. **Concurrent corrective order.** The commissioner may issue an order assessing an administrative penalty and requiring the violations cited in the order to be corrected within 30 calendar days from the date the order is received. The subject of the order shall provide to the commissioner before the 31st day after the order was received, information demonstrating that the violation has been corrected or that a corrective plan, acceptable to the commissioner, has been developed. The commissioner shall determine whether the violation has been corrected and notify the subject of the order of the commissioner's determination.

Subd. 4. **Penalty.** If the commissioner determines that the violation has been corrected or an acceptable corrective plan has been developed, the penalty may be forgiven, except, where there are repeated or serious violations, the commissioner may issue an order with a penalty that will not be forgiven after corrective action is taken. Unless there is a request for review of the order under subdivision 6 before the penalty is due, the penalty is due and payable:

(1) on the 31st calendar day after the order was received, if the subject of the order fails to provide information to the commissioner showing that the violation has been corrected or that appropriate steps have been taken toward correcting the violation;

(2) on the 20th day after the subject of the order receives the commissioner's determination that the information provided is not sufficient to show that the violation has been corrected or that appropriate steps have been taken toward correcting the violation; or

(3) on the 31st day after the order was received where the penalty is for repeated or serious violations and according to the order issued, the penalty will not be forgiven after corrective action is taken.

All penalties due under this section are payable to the treasurer, state of Minnesota, and shall be credited to the state government special revenue fund in the state treasury.

Subd. 5. **Amount of penalty; considerations.** (a) The maximum amount of administrative penalty orders is \$10,000 for each specific violation identified in an inspection, investigation, or compliance review.

(b) In determining the amount of the administrative penalty, the commissioner shall consider the following:

(1) the willfulness of the violation;

(2) the gravity of the violation;

(3) the history of past violations;

(4) the number of violations;

(5) the economic benefit gained by the person allowing or committing the violation; and

(6) other factors as justice may require, if the commissioner specifically identifies the additional factors in the commissioner's order.

(c) In determining the amount of a penalty for a violation subsequent to an initial violation under paragraph (a), the commissioner shall also consider:

(1) the similarity of the most recent previous violation and the violation to be penalized;

(2) the time elapsed since the last violation; and

(3) the response of the subject of the order to the most recent previous violation.

Subd. 6. **Request for hearing; hearing; and final order.** A request for hearing must be in writing, delivered to the commissioner by certified mail within 20 calendar days after the receipt of the order, and specifically state the reasons for seeking review of the order. The commissioner must initiate a hearing within 30 calendar days from the date of receipt of the written request for hearing. The hearing shall be conducted pursuant to the contested case procedures in sections 14.57 to 14.62. No earlier than ten calendar days after and within 30 calendar days of receipt of the presiding administrative law judge's report, the commissioner shall, based on all relevant facts, issue a final order modifying, vacating, or making the original order permanent. If, within 20 calendar days of receipt of the original order, the person that is the subject of the order fails to request a hearing in writing, the order becomes the final order of the commissioner.

Subd. 7. **Review of final order and payment of penalty.** Once the commissioner issues a final order, any penalty due under that order shall be paid within 30 calendar days after

the date of the final order, unless review of the final order is requested. The final order of the commissioner may be appealed in the manner prescribed in sections 14.63 to 14.69. If the final order is reviewed and upheld, the penalty shall be paid 30 calendar days after the date of the decision of the reviewing court. Failure to request an administrative hearing pursuant to subdivision 6 shall constitute a waiver of the right to further agency or judicial review of the final order.

Subd. 8. Reinspections and effect of noncompliance. If upon reinspection, or in the determination of the commissioner, it is found that any deficiency specified in the order has not been corrected or an acceptable corrective plan has not been developed, the person that is subject to the order is in noncompliance. The commissioner shall issue a notice of noncompliance and may impose any additional remedy available under this chapter.

Subd. 9. Enforcement. The attorney general may proceed on behalf of the commissioner to enforce penalties that are due and payable under this section in any manner provided by law for the collection of debts.

Subd. 10. Revocation; suspension; denial of license; permit; or registration. Failure to pay penalties owed under this section constitutes grounds for the revocation or suspension of or refusal to reissue a license or permit issued by the commissioner under this chapter.

Subd. 11. Cumulative remedy. The authority of the commissioner to issue an administrative penalty order is in addition to other lawfully available remedies.

Subd. 12. Mediation. In addition to review under subdivision 6, the commissioner is authorized to enter into mediation concerning an order issued under this section if the commissioner and the subject of that order agree to mediation.

History: 1997 c 215 s 10

149A.07 INJUNCTIVE RELIEF.

In addition to any other remedy provided by law, the commissioner may bring an action for injunctive relief in any district court in any district in Minnesota to restrain any person from violation or threatened violation of any law, rule, order, stipulation agreement, settlement, compliance agreement, license, or permit which the commissioner is empowered to enforce, regulate, or issue.

History: 1997 c 215 s 11

149A.08 CEASE AND DESIST ORDER.

Subdivision 1. Authorization. In addition to any other remedy provided by law, the commissioner may issue a cease and desist order to stop a person from violating or threatening to violate any law, rule, order, stipulation agreement, settlement, compliance agreement, license, or permit which the commissioner is empowered to regulate, enforce, or issue.

Subd. 2. Contents of order. The cease and desist order must be in writing, state the specific reason for its issuance, and give notice of the right to request a hearing under sections 14.57 to 14.62.

Subd. 3. Request for hearing; hearing; and final order. A request for hearing must be in writing, delivered to the commissioner by certified mail within 20 calendar days after the receipt of the cease and desist order, and specifically state the reasons for seeking review of the order. The commissioner must initiate a hearing within 30 calendar days from the date of receipt of the written request for hearing. The hearing shall be conducted pursuant to sections 14.57 to 14.62. No earlier than ten calendar days but within 30 calendar days of receipt of the presiding administrative law judge's report, the commissioner shall issue a final order modifying, vacating, or making permanent the cease and desist order as the facts require. If, within 20 calendar days of receipt of the cease and desist order, the subject of the order fails to request a hearing in writing, the cease and desist order becomes the final order of the commissioner.

Subd. 4. Request for stay. When a request for a stay accompanies a timely hearing request, the commissioner may, in the commissioner's discretion, grant the stay. If the commissioner does not grant a requested stay, the commissioner shall refer the request to the office of administrative hearings within three working days from the receipt of the request. Within ten

MINNESOTA STATUTES 1998

1265

MORTUARY SCIENCE; DISPOSITION OF DEAD BODIES 149A.09

calendar days after receiving the request from the commissioner, an administrative law judge shall issue a recommendation to grant or deny the stay. The commissioner shall grant or deny the stay within five calendar days of receiving the administrative law judge's recommendation.

Subd. 5. Review of final order. A judicial review of the final order issued by the commissioner may be requested in the manner prescribed in sections 14.63 to 14.69. Failure to request a hearing pursuant to subdivision 3 shall constitute a waiver of the right to further agency or judicial review of the final order.

Subd. 6. Effect of noncompliance with order. In the event of noncompliance with the cease and desist order, the commissioner may:

- (1) institute a proceeding in any district court in any district in Minnesota to obtain injunctive relief;
- (2) impose an administrative penalty, pursuant to section 149A.06, for each separate violation; or
- (3) revoke, suspend, limit, or condition the license or permit issued to the subject of the cease and desist order.

Subd. 7. Additional remedies. The issuance of a cease and desist order or injunctive relief does not relieve a person subject to regulation under this chapter from criminal prosecution by a competent authority.

History: 1997 c 215 s 12

149A.09 DENIAL; REFUSAL TO REISSUE; REVOCATION; SUSPENSION; LIMITATION OF LICENSE OR PERMIT.

Subdivision 1. Denial; refusal to renew; revocation; and suspension. The commissioner may deny, refuse to renew, revoke, or suspend any license or permit applied for or issued pursuant to this chapter when the person subject to regulation under this chapter:

- (1) does not meet or fails to maintain the minimum qualification for holding a license or permit under this chapter;
- (2) submits false or misleading material information to the commissioner in connection with a license or permit issued by the commissioner or the application for a license or permit;
- (3) violates any law, rule, order, stipulation agreement, settlement, compliance agreement, license, or permit that regulates the removal, preparation, transportation, arrangements for disposition, or final disposition of dead human bodies in Minnesota or any other state in the United States;
- (4) is convicted of a crime, including a finding or verdict of guilt, an admission of guilt, or a no contest plea in any court in Minnesota or any other jurisdiction in the United States. "Conviction," as used in this subdivision, includes a conviction for an offense which, if committed in this state, would be deemed a felony or gross misdemeanor without regard to its designation elsewhere, or a criminal proceeding where a finding or verdict of guilty is made or returned, but the adjudication of guilt is either withheld or not entered;
- (5) is convicted of a crime, including a finding or verdict of guilt, an admission of guilt, or a no contest plea in any court in Minnesota or any other jurisdiction in the United States that the commissioner determines is reasonably related to the removal, preparation, transportation, arrangements for disposition or final disposition of dead human bodies, or the practice of mortuary science;
- (6) is adjudicated as mentally incompetent, mentally ill, mentally retarded, or mentally ill and dangerous to the public;
- (7) has a conservator or guardian appointed;
- (8) fails to comply with an order issued by the commissioner or fails to pay an administrative penalty imposed by the commissioner;
- (9) owes uncontested delinquent taxes in the amount of \$500 or more to the Minnesota department of revenue, or any other governmental agency authorized to collect taxes anywhere in the United States;
- (10) is in arrears on any court ordered family or child support obligations; or

(11) engages in any conduct that, in the determination of the commissioner, is unprofessional as prescribed in section 149A.70, subdivision 7, or renders the person unfit to practice mortuary science or to operate a funeral establishment or crematory.

Subd. 2. Hearings related to refusal to renew, suspension, or revocation of license or permit. If the commissioner proposes to deny renewal, suspend, or revoke a license or permit issued under this chapter, the commissioner must first notify, in writing, the person against whom the action is proposed to be taken and provide an opportunity to request a hearing under the contested case provisions of sections 14.57 to 14.62. If the subject of the proposed action does not request a hearing by notifying the commissioner, by mail, within 20 calendar days after the receipt of the notice of proposed action, the commissioner may proceed with the action without a hearing and the action will be the final order of the commissioner.

Subd. 3. Review of final order. A judicial review of the final order issued by the commissioner may be requested in the manner prescribed in sections 14.63 to 14.69. Failure to request a hearing pursuant to subdivision 2 shall constitute a waiver of the right to further agency or judicial review of the final order.

Subd. 4. Limitations or qualifications placed on license or permit. The commissioner may, where the facts support such action, place reasonable limitations or qualifications on the right to practice mortuary science or to operate a funeral establishment or crematory.

Subd. 5. Restoring license or permit. The commissioner may, where there is sufficient reason, restore a license or permit that has been revoked, reduce a period of suspension, or remove limitations or qualifications.

History: 1997 c 215 s 13

149A.10 ADDITIONAL REMEDIES.

Subdivision 1. Reimbursement of costs. The commissioner may impose a fee on any person subject to regulation under this chapter to reimburse the department of health for all or part of the cost of contested case proceedings or civil action resulting in disciplinary action, including, but not limited to, the amount paid by the commissioner for services from the office of administrative hearings, attorney fees, court reports, witnesses, reproduction of records, staff time, and other expenses.

Subd. 2. Contested case and civil action; award of fees and expenses. In a contested case proceeding or a civil action, the prevailing party other than the state, upon a showing that the position of the state was not substantially justified, shall be awarded fees and other expenses pursuant to sections 14.62, subdivision 3; and 15.471 to 15.474.

Subd. 3. Other actions. The commissioner may take any other lawful action justified by the facts of the case.

History: 1997 c 215 s 14

149A.11 PUBLICATION OF DISCIPLINARY ACTIONS.

At least annually, the commissioner shall publish and make available to the public a description of all disciplinary measures or actions taken by the commissioner. The publication shall include, for each disciplinary measure or action taken, the name and business address of the licensee or intern, the nature of the misconduct, and the measure or action taken by the commissioner.

History: 1997 c 215 s 15

149A.20 LICENSE TO PRACTICE MORTUARY SCIENCE.

Subdivision 1. License required. Except as provided in section 149A.01, subdivision 3, any person who takes charge of, removes from the place of death, or transports a dead human body, or prepares a dead human body for final disposition in any manner, or arranges, directs, or supervises a funeral, memorial service, or graveside service must possess a valid license to practice mortuary science issued by the commissioner.

Subd. 2. Effective date. The requirements in subdivisions 3 to 13 for initial licensure in mortuary science are effective on July 1, 1997, except as provided in this chapter.

MINNESOTA STATUTES 1998

1267

MORTUARY SCIENCE; DISPOSITION OF DEAD BODIES 149A.20

Subd. 3. Age requirement. The person must be at least 21 years of age.

Subd. 4. Educational requirements. (a) Effective on January 1, 1999, the person shall have:

(1) received a bachelor of science degree with a major in mortuary science from an accredited college or university;

(2) received a bachelor of science or arts degree from an accredited college or university and completed a separate course of study in mortuary science from a college of funeral service education accredited by the American Board of Funeral Service Education; or

(3) completed credit hours at accredited colleges or universities that in the numerical aggregate and distribution are the functional equivalent of a bachelor of arts or science degree and have completed a separate course of study in mortuary science from a college of funeral service education accredited by the American Board of Funeral Service Education.

(b) In the interim, from July 1, 1997, to December 31, 1998, the educational requirements for initial licensure shall be:

(1) successful completion of at least 60 semester credit hours or 90 quarter credit hours at an accredited college or university with the following minimum credit distribution:

(i) communications, including speech and English; 12 quarter hours or nine semester hours;

(ii) social science, including an introductory course in sociology and psychology; 20 quarter hours or 12 semester hours;

(iii) natural science, including general or inorganic chemistry and biology; 20 quarter hours or 12 semester hours;

(iv) health education, including personal or community health; three quarter hours or two semester hours; and

(v) elective areas; 35 quarter hours or 25 semester hours; and

(2) successful completion of a separate course of study in mortuary science from a college of funeral service education accredited by the American Board of Funeral Service Education.

Subd. 5. Examinations. After having met the educational requirements of subdivision 4, a person must attain a passing score on the National Board Examination administered by the Conference of Funeral Service Examining Boards of the United States, Inc. or any other examination that, in the determination of the commissioner, adequately and accurately assesses the knowledge and skills required to practice mortuary science. In addition, a person must attain a passing score on the state licensing examination administered by or on behalf of the commissioner. The state examination shall encompass the laws and rules of Minnesota that pertain to the practice of mortuary science. The commissioner shall make available copies of all pertinent laws and rules prior to administration of the state licensing examination.

Subd. 6. Internship. (a) A person who attains a passing score on both examinations in subdivision 5 must complete a registered internship under the direct supervision of an individual currently licensed to practice mortuary science in Minnesota. Interns must file with the commissioner:

(1) the appropriate fee; and

(2) a registration form indicating the name and home address of the intern, the date the internship begins, and the name, license number, and business address of the supervising mortuary science licensee.

(b) Any changes in information provided in the registration must be immediately reported to the commissioner. The internship shall be a minimum of one calendar year and a maximum of three calendar years in duration; however, the commissioner may waive up to three months of the internship time requirement upon satisfactory completion of the practicum in mortuary science administered through the program of mortuary science of the University of Minnesota or a substantially similar program. Registrations must be renewed on an annual basis if they exceed one calendar year. During the internship period, the intern must be under the direct and exclusive supervision of a person holding a current license to practice mortuary science in Minnesota. An intern may be registered under only one licensee at any given time and may be directed and supervised only by the registered licensee. The registered

MINNESOTA STATUTES 1998

licensee shall have only one intern registered at any given time. The commissioner shall issue to each registered intern a registration permit that must be displayed with the other establishment and practice licenses. While under the direct and exclusive supervision of the licensee, the intern must actively participate in the embalming of at least 25 dead human bodies and in the arrangements for and direction of at least 25 funerals. Case reports, on forms provided by the commissioner, shall be completed by the intern, signed by the supervising licensee, and filed with the commissioner for at least 25 embalmings and funerals in which the intern participates. Information contained in these reports that identifies the subject or the family of the subject embalmed or the subject or the family of the subject of the funeral shall be classified as licensing data under section 13.41, subdivision 2.

Subd. 7. Application procedure and documentation. After completing the registered internship, the applicant for an initial license to practice mortuary science must submit to the commissioner a complete application and the appropriate fee. A complete application includes:

- (1) a completed application form, as provided by the commissioner;
- (2) proof of age;
- (3) an official transcript from each post high school educational institution attended, including colleges of funeral service education;
- (4) certification of a passing score on the National Board Examination from the commissioner of the Conference of Funeral Service Examining Boards of the United States, Inc.;
- (5) a copy of the notification of a passing score on the state licensing examination; and
- (6) a signed, dated, and notarized affidavit from the licensee who supervised the Minnesota internship stating the date the internship began and ended and that both the applicant and the supervising licensee fulfilled the requirements under subdivision 6.

Upon receipt of the completed application and appropriate fee, the commissioner shall review and verify all information. Upon completion of the verification process and resolution of any deficiencies in the application information, the commissioner shall make a determination, based on all the information available, to grant or deny licensure. If the commissioner's determination is to grant licensure, the applicant shall be notified and the license shall issue and remain valid for a period prescribed on the license, but not to exceed one calendar year from the date of issuance of the license. If the commissioner's determination is to deny licensure, the commissioner must notify the applicant, in writing, of the denial and provide the specific reason for the denial.

Subd. 8. Fees. Fees shall be paid to the treasurer, state of Minnesota, and shall be credited to the state government special revenue fund in the state treasury.

Subd. 9. Period of licensure. All licenses to practice mortuary science issued by the commissioner shall be valid for one calendar year, beginning on January 1 and ending on December 31 regardless of the date of issuance. Fees may not be prorated.

Subd. 10. Display of license. Each license to practice mortuary science must be conspicuously displayed at all times in the holder's place of business. Conspicuous display means in a location where a member of the general public within the holder's place of business will be able to observe and read the license.

Subd. 11. Nontransferability of license. A license to practice mortuary science is not assignable or transferable and is not valid for any person other than the individual named.

Subd. 12. Reporting changes in license information. Any change of license information must be reported to the commissioner, on forms provided by the commissioner, no later than 30 calendar days after the change occurs. Failure to report changes is grounds for disciplinary action.

Subd. 13. Application information. All information submitted to the commissioner by an applicant for licensure to practice mortuary science is classified as licensing data under section 13.41, with the exception of the name and address of the applicant. Upon issuance of a license to practice mortuary science, all application information becomes licensing data under section 13.41, subdivision 4, with the exception of internship case report data as classified under subdivision 6.

History: 1997 c 215 s 16

149A.30 RECIPROCAL LICENSING.

Subdivision 1. **Licenses of other states.** The commissioner may issue a license to practice mortuary science to a person who holds a current license or other credential from another jurisdiction if the commissioner determines that the requirements for that license or other credential are substantially similar to the requirements under this chapter. The individual seeking reciprocal licensing must:

- (1) attain a passing score on the Minnesota state licensing examination,
- (2) submit to the commissioner the documentation described in section 149A.20, subdivision 7, clauses (1) and (5); and
- (3) pay the appropriate licensing fee.

When, in the determination of the commissioner, all of the requirements of this subdivision have been met, the commissioner shall, based on all the information available, grant or deny licensure. If the commissioner grants licensure, the applicant shall be notified and the license shall issue and remain valid for a period prescribed on the license, but not to exceed one calendar year from the date of issuance of the license. If the commissioner denies licensure, the commissioner must notify the applicant, in writing, of the denial and provide the specific reason for denial.

Subd. 2. **Fees.** Fees shall be paid to the treasurer, state of Minnesota, and shall be credited to the state government special revenue fund in the state treasury.

Subd. 3. **Period of licensure.** All reciprocal licenses to practice mortuary science issued by the commissioner shall be valid for one calendar year, beginning on January 1 and ending on December 31 regardless of the date of issuance. Fees shall not be prorated.

Subd. 4. **Display of license.** Each reciprocal license to practice mortuary science must be conspicuously displayed at all times in the holder's place of business. Conspicuous display means in a location where a member of the general public within the holder's place of business will be able to observe and read the license.

Subd. 5. **Nontransferability of license.** A reciprocal license to practice mortuary science is not assignable or transferable and shall not be valid for any person other than the person named.

Subd. 6. **Reporting changes in license information.** Any change of license information must be reported to the commissioner, on forms provided by the commissioner, no later than 30 calendar days after the change occurs. Failure to report changes is grounds for disciplinary action.

Subd. 7. **Application information.** All information submitted to the commissioner by an applicant for reciprocal licensure is classified as licensing data under section 13.41, subdivision 2, with the exception of the name and address of the applicant. Upon issuance of a license to practice mortuary science, all application information becomes licensing data under section 13.41, subdivision 4

History: 1997 c 215 s 17

149A.40 RENEWAL OF LICENSE TO PRACTICE MORTUARY SCIENCE.

Subdivision 1. **Renewal request.** All licenses to practice mortuary science issued by the commissioner expire on December 31 of the calendar year in which the license is issued and must be renewed to remain valid.

Subd. 2. **Limited license; funeral director only.** Any person who held a funeral director only license on July 31, 1957, may renew the license under this section. Individuals practicing under a funeral director only license issued under this subdivision are prohibited from engaging in the practice of embalming a dead human body

Subd. 3. **Renewal procedure and documentation.** Licensees who wish to renew their licenses must submit to the commissioner a completed renewal application and the renewal fee no later than December 31 of the year in which the license was issued. A completed renewal application includes:

- (1) a completed renewal application form, as provided by the commissioner; and
- (2) the appropriate renewal licensing fee.

Upon receipt of the completed renewal application and appropriate fee, the commissioner shall review and verify all information. Upon completion of the verification process and resolution of any deficiencies in the renewal application information, the commissioner shall make a determination, based on all the information available, to reissue or refuse to reissue the license. If the commissioner's determination is to reissue the license, the applicant shall be notified and the license shall issue and remain valid for a period prescribed on the license, but not to exceed one calendar year from the date of issuance of the license. If the commissioner's determination is to refuse to reissue the license, section 149A.09, subdivision 2, applies.

Subd. 4. **Penalty for late filing.** Renewal applications received after the expiration date of a license shall result in the assessment of a late filing penalty. The late filing penalty must be paid before the reissuance of the license and received by the commissioner no later than 31 calendar days after the expiration date of the license.

Subd. 5. **Lapse of license.** A license to practice mortuary science shall automatically lapse when a completed renewal application and renewal fee are not received by the commissioner within 31 calendar days after the expiration date of a license or a late filing penalty assessed under subdivision 4 is not received by the commissioner within 31 calendar days after the expiration of a license.

Subd. 6. **Effect of lapse of license.** Upon the lapse of a license, the person to whom the license was issued is no longer licensed to practice mortuary science in Minnesota. The commissioner shall issue a cease and desist order to prevent the individual from engaging in the practice of mortuary science in Minnesota and may pursue any additional lawful remedies as justified by the case.

Subd. 7. **Restoration of lapsed license.** The commissioner may restore a lapsed license upon receipt and review of a completed renewal application, renewal fee, and late filing penalty, provided that the receipt is made within one calendar year from the expiration date of the lapsed license and the person has not violated the cease and desist order issued by the commissioner. If a lapsed license is not restored within one calendar year from the expiration date of the lapsed license, the person to whom the lapsed license was issued cannot be relicensed until the requirements in section 149A.20 are met.

Subd. 8. **Renewal fees.** The renewal fees shall be paid to the treasurer, state of Minnesota, and shall be credited to the state government special revenue fund in the state treasury.

Subd. 9. **Reporting changes in license information.** Any change of license information must be reported to the commissioner, on forms provided by the commissioner, no later than 30 calendar days after the change occurs. Failure to report changes is grounds for disciplinary action.

Subd. 10. **Application information.** All information submitted to the commissioner by an applicant for renewal of licensure to practice mortuary science is classified as licensing data under section 13.41, subdivision 2, with the exception of the name and address of the applicant. Upon reissuance of a license to practice mortuary science, all application information becomes licensing data under section 13.41, subdivision 4.

Subd. 11. **Continuing education.** The commissioner may, upon presentation of an appropriate program of continuing education developed by the Minnesota Funeral Directors Association, require continuing education hours for renewal of a license to practice mortuary science.

History: 1997 c 215 s 18

149A.50 LICENSE TO OPERATE A FUNERAL ESTABLISHMENT.

Subdivision 1. **License required.** Except as provided in section 149A.01, subdivision 3, no person shall maintain, manage, or operate a place or premise devoted to or used in the holding, care, or preparation of a dead human body for final disposition, or any place used as the office or place of business for the provision of funeral services, without possessing a valid license to operate a funeral establishment issued by the commissioner of health.

Subd. 2. **Requirements for funeral establishment.** A funeral establishment licensed under this section must contain:

- (1) a preparation and embalming room as described in section 149A.92; and

(2) office space for making arrangements.

Subd. 3. **Application; procedure; documentation; initial inspection.** An applicant for a license to operate a funeral establishment shall submit to the commissioner a completed application and the appropriate fees. A completed application includes:

- (1) a completed application form, as provided by the commissioner;
- (2) proof of business form and ownership; and
- (3) proof of liability insurance coverage or other financial documentation, as determined by the commissioner, that demonstrates the applicant's ability to respond in damages for liability arising from the ownership, maintenance, management, or operation of a funeral establishment.

Upon receipt of the application and appropriate fee, the commissioner shall review and verify all information. Upon completion of the verification process and resolution of any deficiencies in the application information, the commissioner shall conduct an initial inspection of the premises to be licensed. After the inspection and resolution of any deficiencies found, and any reinspections as may be necessary, the commissioner shall make a determination, based on all the information available, to grant or deny licensure. If the commissioner's determination is to grant the license, the applicant shall be notified and the license shall issue and remain valid for a period prescribed on the license, but not to exceed one calendar year from the date of issuance of the license. If the commissioner's determination is to deny the license, the commissioner must notify the applicant, in writing, of the denial and provide the specific reason for denial.

Subd. 4. **Nontransferability of license.** A license to operate a funeral establishment is not assignable or transferable and shall not be valid for any person other than the one named. Each license issued to operate a funeral establishment is valid only for the location identified on the license. A change in ownership or location of the funeral establishment automatically terminates the license. Separate licenses shall be required of two or more persons or other legal entities operating from the same location.

Subd. 5. **Display of license.** Each license to operate a funeral establishment must be conspicuously displayed in the funeral establishment at all times. Conspicuous display means in a location where a member of the general public within the funeral establishment will be able to observe and read the license.

Subd. 6. **Initial licensure and inspection fees.** The licensure and inspection fees shall be paid to the treasurer, state of Minnesota, to the credit of the state government special revenue fund in the state treasury.

Subd. 7. **Period of licensure.** All licenses to operate a funeral establishment issued by the commissioner are valid for a period of one calendar year beginning on July 1 and ending on June 30, regardless of the date of issuance. Fees shall not be prorated.

Subd. 8. **Reporting changes in license information.** Any change of license information must be reported to the commissioner, on forms provided by the commissioner, no later than 30 calendar days after the change occurs. Failure to report changes is grounds for disciplinary action.

Subd. 9. **Application information.** All information submitted to the commissioner by an applicant for a license to operate a funeral establishment is classified as licensing data under section 13.41, subdivision 4.

History: 1997 c 215 s 19

149A.51 RENEWAL OF LICENSE TO OPERATE A FUNERAL ESTABLISHMENT.

Subdivision 1. **Renewal required.** A license to operate a funeral establishment issued by the commissioner expires on June 30 following the date of issuance of the license and must be renewed to remain valid.

Subd. 2. **Renewal procedure and documentation.** Licensees who wish to renew their licenses must submit to the commissioner a completed renewal application and the renewal fee no later than June 30 following the date the license was issued. A completed renewal application includes:

MINNESOTA STATUTES 1998

- (1) a completed renewal application form, as provided by the commissioner; and
- (2) proof of liability insurance coverage or other financial documentation, as determined by the commissioner, that demonstrates the applicant's ability to respond in damages for liability arising from the ownership, maintenance, management, or operation of a funeral establishment.

Upon receipt of the completed renewal application and appropriate fee, the commissioner shall review and verify all information. Upon completion of the verification process and resolution of any deficiencies in the renewal application information, the commissioner shall make a determination, based on all the information available, to reissue or refuse to reissue the license. If the commissioner's determination is to reissue the license, the applicant shall be notified and the license shall issue and remain valid for a period prescribed on the license, but not to exceed one calendar year from the date of issuance of the license. If the commissioner's determination is to refuse to reissue the license, section 149A.09, subdivision 2, applies.

Subd. 3. Penalty for late filing. Renewal applications received after the expiration date of a license shall result in the assessment of a late filing penalty. The late filing penalty must be paid prior to the reissuance of the license and received by the commissioner no later than 31 calendar days after the expiration date of the license.

Subd. 4. Lapse of license. Licenses to operate funeral establishments shall automatically lapse when a completed renewal application and renewal fee are not received by the commissioner within 31 calendar days after the expiration date of a license or a late filing penalty assessed under subdivision 3 is not received by the commissioner within 31 calendar days after the expiration of a license.

Subd. 5. Effect of lapse of license. Upon the lapse of a license, the person to whom the license was issued is no longer licensed to operate a funeral establishment in Minnesota. The commissioner shall issue a cease and desist order to prevent the holder of a lapsed license from operating a funeral establishment in Minnesota and may pursue any additional lawful remedies as justified by the case.

Subd. 6. Restoration of lapsed license. The commissioner may restore a lapsed license upon receipt and review of a completed renewal application, receipt of the renewal fee and late filing penalty, reinspection of the premises, and receipt of the reinspection fee, provided that the receipt is made within one calendar year from the expiration date of the lapsed license, and the cease and desist order issued by the commissioner has not been violated. If a lapsed license is not restored within one calendar year from the expiration date of the lapsed license, the holder of the lapsed license may not be relicensed until the requirements in section 149A.50 are met.

Subd. 7. Renewal and reinspection fees. The renewal and reinspection fees shall be paid to the treasurer, state of Minnesota, and shall be credited to the state government special revenue fund in the state treasury.

Subd. 8. Reporting changes in license information. Any change of license information must be reported to the commissioner, on forms provided by the commissioner, no later than 30 calendar days after the change occurs. Failure to report changes is grounds for disciplinary action.

Subd. 9. Application information. All information submitted to the commissioner by an applicant for renewal of licensure to operate a funeral establishment is classified as licensing data under section 13.41, subdivision 4.

History: 1997 c 215 s 20

149A.52 LICENSE TO OPERATE A CREMATORY.

Subdivision 1. License requirement. Except as provided in section 149A.01, subdivision 3, no person shall maintain, manage, or operate a place or premises devoted to or used in the holding and cremation of a dead human body without possessing a valid license to operate a crematory issued by the commissioner of health.

Subd. 2. Requirements for crematory. (a) A crematory licensed under this section must consist of:

(1) a building or structure that complies with applicable local and state building codes, zoning laws and ordinances, and environmental standards, containing one or more cremation chambers or retorts for the cremation of dead human bodies;

(2) a motorized mechanical device for grinding, crushing, or pulverizing the cremated remains to a granulated appearance appropriate for final disposition; and

(3) an appropriate holding facility for dead human bodies awaiting cremation.

(b) A crematory licensed under this section may also contain a display room for funeral goods.

Subd. 3. Application procedure; documentation; initial inspection. An applicant for a license to operate a crematory shall submit to the commissioner a completed application. A completed application includes:

(1) a completed application form, as provided by the commissioner;

(2) proof of business form and ownership; and

(3) proof of liability insurance coverage or other financial documentation, as determined by the commissioner, that demonstrates the applicant's ability to respond in damages for liability arising from the ownership, maintenance, management, or operation of a crematory.

Upon receipt of the application, the commissioner shall review and verify all information. Upon completion of the verification process and resolution of any deficiencies in the application information, the commissioner shall conduct an initial inspection of the premises to be licensed. After the inspection and resolution of any deficiencies found and any re-inspections as may be necessary, the commissioner shall make a determination, based on all the information available, to grant or deny licensure. If the commissioner's determination is to grant the license, the applicant shall be notified and the license shall issue and remain valid for a period prescribed on the license, but not to exceed one calendar year from the date of issuance of the license. If the commissioner's determination is to deny the license, the commissioner must notify the applicant, in writing, of the denial and provide the specific reason for denial.

Subd. 4. Nontransferability of license. A license to operate a crematory is not assignable or transferable and shall not be valid for any person other than the one named. Each license issued to operate a crematory is valid only for the location identified on the license. A change in ownership or location of the crematory automatically terminates the license. Separate licenses shall be required of two or more persons or other legal entities operating from the same location.

Subd. 5. Display of license. Each license to operate a crematory must be conspicuously displayed in the crematory at all times. Conspicuous display means in a location where a member of the general public within the crematory will be able to observe and read the license.

Subd. 6. Period of licensure. All licenses to operate a crematory issued by the commissioner are valid for a period of one calendar year beginning on July 1 and ending on June 30, regardless of the date of issuance.

Subd. 7. Reporting changes in license information. Any change of license information must be reported to the commissioner, on forms provided by the commissioner, no later than 30 calendar days after the change occurs. Failure to report changes is grounds for disciplinary action.

Subd. 8. Application information. All information submitted to the commissioner by an applicant for a license to operate a crematory is classified as licensing data under section 13.41, subdivision 4.

History: 1997 c 215 s 21

149A.53 RENEWAL OF LICENSE TO OPERATE CREMATORY.

Subdivision 1. **Renewal required.** All licenses to operate a crematory issued by the commissioner expire on June 30 following the date of issuance of the license and must be renewed to remain valid.

Subd. 2. **Renewal procedure and documentation.** Licensees who wish to renew their licenses must submit to the commissioner a completed renewal application no later than June 30 following the date the license was issued. A completed renewal application includes:

- (1) a completed renewal application form, as provided by the commissioner; and
- (2) proof of liability insurance coverage or other financial documentation, as determined by the commissioner, that demonstrates the applicant's ability to respond in damages for liability arising from the ownership, maintenance, management, or operation of a crematory.

Upon receipt of the completed renewal application, the commissioner shall review and verify the information. Upon completion of the verification process and resolution of any deficiencies in the renewal application information, the commissioner shall make a determination, based on all the information available, to reissue or refuse to reissue the license. If the commissioner's determination is to reissue the license, the applicant shall be notified and the license shall issue and remain valid for a period prescribed on the license, but not to exceed one calendar year from the date of issuance of the license. If the commissioner's determination is to refuse to reissue the license, section 149A.09, subdivision 2, applies.

Subd. 3. **Penalty for late filing.** Renewal applications received after the expiration date of a license will result in the assessment of a late filing penalty. The late filing penalty must be paid before the reissuance of the license and received by the commissioner no later than 31 calendar days after the expiration date of the license.

Subd. 4. **Lapse of license.** Licenses to operate crematories shall automatically lapse when a completed renewal application is not received by the commissioner within 31 calendar days after the expiration date of a license, or a late filing penalty assessed under subdivision 3 is not received by the commissioner within 31 calendar days after the expiration of a license.

Subd. 5. **Effect of lapse of license.** Upon the lapse of a license, the person to whom the license was issued is no longer licensed to operate a crematory in Minnesota. The commissioner shall issue a cease and desist order to prevent the lapsed license holder from operating a crematory in Minnesota and may pursue any additional lawful remedies as justified by the case.

Subd. 6. **Restoration of lapsed license.** The commissioner may restore a lapsed license upon receipt and review of a completed renewal application, receipt of the late filing penalty, and reinspection of the premises, provided that the receipt is made within one calendar year from the expiration date of the lapsed license and the cease and desist order issued by the commissioner has not been violated. If a lapsed license is not restored within one calendar year from the expiration date of the lapsed license, the holder of the lapsed license cannot be relicensed until the requirements in section 149A.52 are met.

Subd. 7. **Reporting changes in license information.** Any change of license information must be reported to the commissioner, on forms provided by the commissioner, no later than 30 calendar days after the change occurs. Failure to report changes is grounds for disciplinary action.

Subd. 8. **Application information.** All information submitted to the commissioner by an applicant for renewal of licensure to operate a crematory is classified as licensing data under section 13.41, subdivision 4.

History: 1997 c 215 s 22

149A.60 PROHIBITED CONDUCT.

The commissioner may impose disciplinary measures or take disciplinary action against a person whose conduct is subject to regulation under this chapter for failure to comply with any provision of this chapter or laws, rules, orders, stipulation agreements, settlements, compliance agreements, licenses, and permits adopted, or issued for the regulation of the removal, preparation, transportation, arrangements for disposition or final disposition of dead human bodies, or for the regulation of the practice of mortuary science.

History: 1997 c 215 s 23

149A.61 COMPLAINTS; REPORTING OBLIGATIONS; FORM; RESPONSE.

Subdivision 1. **Permission to report.** Any person, agency, political subdivision, organization, or association that has knowledge of any conduct constituting grounds for disciplinary action relating to licensure, licensed activities or practices, or unlicensed activities under this chapter may report the conduct to the commissioner.

Subd. 2. **Institutions.** A federal or state agency, political subdivision, agency of a local unit of government, or private agency or organization located in this state or any other state in the United States may report to the commissioner any conduct that is regulated under this chapter and that might constitute grounds for disciplinary action. The agency, political subdivision, or organization may report:

(1) any action taken to revoke, suspend, restrict, or condition a license issued by the agency, political subdivision, or organization;

(2) any denial of privileges granted by the agency, political subdivision, or organization;

(3) the resignation of any licensee prior to the conclusion of any disciplinary action or proceeding for conduct that might constitute grounds for disciplinary action under this chapter; or

(4) any other disciplinary action taken by the agency, political subdivision, or organization for conduct that might constitute grounds for disciplinary action under this chapter.

Subd. 3. **Professional societies or associations.** A national, regional, state, or local professional society or association for licensees may forward to the commissioner any complaint received concerning conduct or activity that is regulated under this chapter. The society or association may report to the commissioner any disciplinary action taken against a member of that society or association.

Subd. 4. **Licensees and interns.** A licensee or intern regulated under this chapter may report to the commissioner any conduct that the licensee or intern has personal knowledge of, and reasonably believes constitutes grounds for, disciplinary action under this chapter.

Subd. 5. **Courts.** The court administrator of district court or any court of competent jurisdiction shall report to the commissioner any judgment or other determination of the court that adjudges or includes a finding that a licensee or intern is mentally ill, mentally incompetent, guilty of a felony or gross misdemeanor, guilty of violations of federal or state narcotics laws or controlled substances acts; appoints a guardian or conservator for the licensee or intern; or commits a licensee or intern.

Subd. 6. **Complaint form.** Complaints or reports made under this section may be submitted to the commissioner on forms provided by the commissioner. The commissioner, where appropriate, shall provide each complainant with a written acknowledgment of the receipt of the completed complaint form.

Subd. 7. **Information to complainant.** The commissioner shall furnish to a complainant a statement of the result of an investigation of the complaint and a description of the activities and actions of the commissioner relating to the complaint to the extent that the statement is consistent with section 149A.04, subdivision 5.

Subd. 8. **Classification of data.** Section 149A.04, subdivision 5, applies to data submitted to the commissioner under this section.

History: 1997 c 215 s 24

149A.62 IMMUNITY; REPORTING.

Any person, private agency, organization, society, association, licensee, or intern who, in good faith, submits information to the commissioner under section 149A.61 or otherwise reports violations or alleged violations of this chapter, is immune from civil liability or criminal prosecution. This section does not prohibit disciplinary action taken by the commissioner against any licensee or intern pursuant to a self report of a violation.

History: 1997 c 215 s 25

149A.63 PROFESSIONAL COOPERATION.

A licensee, intern, or applicant for licensure under this chapter that is the subject of an inspection or investigation by the commissioner or the commissioner's designee shall coop-

erate fully with the inspection or investigation. Failure to cooperate constitutes grounds for disciplinary action under this chapter.

History: 1997 c 215 s 26

149A.70 BUSINESS PRACTICES.

Subdivision 1. **Use of titles.** Only a person holding a valid license to practice mortuary science issued by the commissioner may use the title of mortician, funeral director, or any other title implying that the licensee is engaged in the business or practice of mortuary science. Only the holder of a valid license to operate a funeral establishment issued by the commissioner may use the title of funeral home, funeral chapel, or any other title, word, or term implying that the licensee is engaged in the business or practice of mortuary science. Only the holder of a valid license to operate a crematory issued by the commissioner may use the title of crematory, crematorium, or any other title, word, or term implying that the licensee operates a crematory or crematorium.

Subd. 2. **Business location.** A funeral establishment or crematory shall not do business in a location that is not licensed as a funeral establishment or crematory and shall not advertise a service that is available from an unlicensed location.

Subd. 3. **Advertising.** No licensee or intern shall publish or disseminate false, misleading, or deceptive advertising. False, misleading, or deceptive advertising includes, but is not limited to:

(1) identifying, by using the names or pictures of, persons who are not licensed to practice mortuary science in a way that leads the public to believe that those persons will provide mortuary science services;

(2) using any name other than the names under which the funeral establishment or crematory is known to or licensed by the commissioner;

(3) using a surname not directly, actively, or presently associated with a licensed funeral establishment or crematory, unless the surname had been previously and continuously used by the licensed funeral establishment or crematory; and

(4) using a founding or establishing date or total years of service not directly or continuously related to a name under which the funeral establishment or crematory is currently or was previously licensed.

Any advertising or other printed material that contains the names or pictures of persons affiliated with a funeral establishment or crematory shall state the position held by the persons and shall identify each person who is licensed or unlicensed under this chapter.

Subd. 4. **Solicitation of business.** No licensee shall directly or indirectly pay or cause to be paid any sum of money or other valuable consideration for the securing of business or for obtaining the authority to dispose of any dead human body.

For purposes of this subdivision, licensee includes a registered intern or any agent, representative, employee, or person acting on behalf of the licensee.

Subd. 5. **Offer; solicitation or acceptance of fees; commissions; or other reimbursement.** No licensee or intern shall offer, solicit, or accept a commission, fee, bonus, rebate, or other reimbursement in consideration for recommending or causing a dead human body to be disposed of in specific crematory, mausoleum, or cemetery.

Subd. 6. **Use of unlicensed personnel; interns; and practicum students.** Except as otherwise provided in this chapter, a licensed funeral establishment may employ unlicensed personnel to perform the duties of a funeral director or mortician so long as the unlicensed personnel act under the direct supervision of an individual holding a current license to practice mortuary science in Minnesota and all applicable provisions of this chapter are followed. It is the duty of the licensees, individual or establishment, to provide proper training for all unlicensed personnel, and the licensees shall be strictly accountable for compliance with this chapter. This subdivision does not apply to registered interns who are under the direct and exclusive supervision of a registered licensee or a student duly registered for a practicum through an accredited college or university or a college of funeral service education accredited by the American Board of Funeral Service Education.

Subd. 7. **Unprofessional conduct.** No licensee or intern shall engage in or permit others under the licensee's or intern's supervision or employment to engage in unprofessional conduct. Unprofessional conduct includes, but is not limited to:

- (1) harassing, abusing, or intimidating a customer, employee, or any other person encountered while within the scope of practice, employment, or business;
- (2) using profane, indecent, or obscene language within the immediate hearing of the family or relatives of the deceased;
- (3) failure to treat with dignity and respect the body of the deceased, any member of the family or relatives of the deceased, any employee, or any other person encountered while within the scope of practice, employment, or business;
- (4) the habitual overindulgence in the use of or dependence on intoxicating liquors, prescription drugs, over-the-counter drugs, illegal drugs, or any other mood altering substances that substantially impair a person's work-related judgment or performance;
- (5) revealing personally identifiable facts, data, or information about a decedent, customer, member of the decedent's family, or employee acquired in the practice or business without the prior consent of the individual, except as authorized by law;
- (6) intentionally misleading or deceiving any customer in the sale of any goods or services provided by the licensee,
- (7) knowingly making a false statement in the procuring, preparation, or filing of any required permit; or
- (8) knowingly making a false statement on a certificate of death.

History: 1997 c 215 s 27

149A.71 FUNERAL INDUSTRY PRACTICES; PRICE DISCLOSURES.

Subdivision 1. **Unfair or deceptive acts or practices.** In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of dead human bodies to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in subdivision 2 is not engaged in the unfair or deceptive acts or practices defined in this section.

Subd. 2. **Preventive requirements.** (a) To prevent unfair or deceptive acts or practices, the requirements of this subdivision must be met.

(b) Funeral providers must tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (c) to (e) and any other readily available information that reasonably answers the questions asked.

(c) Funeral providers must make available for viewing to people who inquire in person about the offerings or prices of funeral goods, separate printed or typewritten price lists. Each funeral provider must have a separate price list for each of the following types of goods that are sold or offered for sale:

- (1) caskets;
- (2) alternative containers;
- (3) outer burial containers; and
- (4) cremation containers and cremated remains containers.

(d) Each separate price list must contain the name of the funeral provider's place of business and a caption describing the list as a price list for one of the types of funeral goods described in paragraph (c), clauses (1) to (4). The funeral provider must offer the list upon beginning discussion of, but in any event before showing, the specific funeral goods and must provide a photocopy of the price list, for retention, if so asked by the consumer. The list must contain, at least, the retail prices of all the specific funeral goods offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written price list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and

MINNESOTA STATUTES 1998

display it in a clear and conspicuous manner. However, funeral providers are not required to make a specific price list available if the funeral providers place the information required by this paragraph on the general price list described in paragraph (e).

(e) Funeral providers must give a printed or typewritten price list, for retention, to persons who inquire in person about the funeral goods or funeral services or prices offered by the funeral provider. The funeral provider must give the list upon beginning discussion of either the prices of or the overall type of funeral service or disposition or specific funeral goods or funeral services offered by the provider. This requirement applies whether the discussion takes place in the funeral establishment or elsewhere. However, when the deceased is removed for transportation to the funeral establishment, an in-person request for authorization to embalm does not, by itself, trigger the requirement to offer the general price list. If the provider, in making an in-person request for authorization to embalm, discloses that embalming is not required by law except in certain special cases, the provider is not required to offer the general price list. Any other discussion during that time about prices or the selection of funeral goods or funeral services triggers the requirement to give the consumer a general price list. The general price list must contain the following information:

- (1) the name, address, and telephone number of the funeral provider's place of business;
- (2) a caption describing the list as a "general price list";
- (3) the effective date for the price list;
- (4) the retail prices, in any order, expressed either as a flat fee or as the prices per hour, mile, or other unit of computation, and other information described as follows:
 - (i) forwarding of remains to another funeral establishment, together with a list of the services provided for any quoted price,
 - (ii) receiving remains from another funeral establishment, together with a list of the services provided for any quoted price;
 - (iii) separate prices for each cremation offered by the funeral provider, with the price including an alternative or cremation container, any crematory charges, and a description of the services and container included in the price, where applicable, and the price of cremation where the purchaser provides the container;
 - (iv) separate prices for each immediate burial offered by the funeral provider, including a casket or alternative container, and a description of the services and container included in that price, and the price of immediate burial where the purchaser provides the casket or alternative container;
 - (v) transfer of remains to the funeral establishment;
 - (vi) embalming;
 - (vii) other preparation of the body;
 - (viii) use of facilities, equipment, or staff for viewing;
 - (ix) use of facilities, equipment, or staff for funeral ceremony;
 - (x) use of facilities, equipment, or staff for memorial service;
 - (xi) use of equipment or staff for graveside service;
 - (xii) hearse or funeral coach; and
 - (xiii) limousine;
- (5) the price range for the caskets offered by the funeral provider, together with the statement "A complete price list will be provided at the funeral establishment." or the prices of individual caskets, as disclosed in the manner described in paragraphs (c) and (d);
- (6) the price range for the alternative containers offered by the funeral provider, together with the statement "A complete price list will be provided at the funeral establishment." or the prices of individual alternative containers, as disclosed in the manner described in paragraphs (c) and (d);
- (7) the price range for the outer burial containers offered by the funeral provider, together with the statement "A complete price list will be provided at the funeral establishment." or the prices of individual outer burial containers, as disclosed in the manner described in paragraphs (c) and (d);
- (8) the price range for the cremation containers and cremated remains containers offered by the funeral provider, together with the statement "A complete price list will be pro-

vided at the funeral establishment.” or the prices of individual cremation containers and cremated remains containers, as disclosed in the manner described in paragraphs (c) and (d);

(9) the price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement “This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)” If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase “and overhead” after the word “services.” This services fee is the only funeral provider fee for services, facilities, or unallocated overhead permitted by this subdivision to be nondeclinable, unless otherwise required by law;

(10) if the price for basic services, as described in clause (9), is not applicable, the statement “Please note that a fee for the use of our basic services is included in the price of our caskets. Our services include (specify services provided).” The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase “and overhead” after the word “services.” The statement must be placed on the general price list, together with the casket price range or the prices of individual caskets. This services fee is the only funeral provider fee for services, facilities, or unallocated overhead permitted by this subdivision to be nondeclinable, unless otherwise required by law.

(f) Funeral providers must give an itemized written statement, for retention, to each consumer who arranges a funeral or other disposition of human remains at the conclusion of the discussion of the arrangements. The itemized written statement must be signed by the consumer selecting the goods and services and the licensed funeral director or mortician planning the arrangements. The statement must list the funeral goods and funeral services selected by that consumer and the prices to be paid for each item, specifically itemized cash advance items (these prices must be given to the extent then known or reasonably ascertainable if the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid), and the total cost of goods and services selected. The information required by this paragraph may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(g) Funeral providers must give any other price information, in any other format, in addition to that required by paragraphs (c) to (e) so long as the written statement required by paragraph (f) is given when required.

Subd. 3. Prices displayed. Any funeral provider who sells or offers to sell funeral goods to the public shall, at all times, display the retail price of all displayed funeral goods in a conspicuous place on the goods. “Conspicuous place” means a place where any consumer viewing the funeral goods would be able to see and read the price and reasonably understand that the price seen is the price of the funeral goods viewed. Displayed funeral goods are those goods that the funeral provider regularly maintains in inventory and makes available for viewing and purchase by the consumer.

Subd. 4. Casket, alternate container, and cremation container sales; records; required disclosures. Any funeral provider who sells or offers to sell a casket, alternate container, or cremation container to the public must maintain a record of each sale that includes the name of the purchaser, the purchaser’s mailing address, the name of the decedent, the date of the decedent’s death, and the place of death. These records shall be open to inspection by the commissioner and reported to the commissioner. Any funeral provider selling a casket, alternate container, or cremation container to the public, and not having charge of the final disposition of the dead human body, shall enclose within the casket, alternate container, or cremation container information provided by the commissioner that includes a blank certificate of death, and a copy of the statutes and rules controlling the removal, preparation, transportation, arrangements for disposition, and final disposition of a dead human body. This

section does not apply to morticians, funeral directors, funeral establishments, crematories, or wholesale distributors of caskets, alternate containers, or cremation containers.

History: 1997 c 215 s 28

149A.72 FUNERAL INDUSTRY PRACTICES; MISREPRESENTATIONS.

Subdivision 1. **Embalming provisions; deceptive acts or practices.** In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to represent that state or local law requires that a dead human body be embalmed when that is not the case or to fail to disclose that embalming is not required by law except in certain cases.

Subd. 2. **Embalming provisions; preventive requirements.** To prevent deceptive acts or practices, a funeral provider must not represent that a dead human body is required to be embalmed for direct cremation, immediate burial, or a closed casket funeral without viewing or visitation, when refrigeration is available and when not required by law. The funeral provider must also place the following disclosure on the general price list, described in section 149A.71, subdivision 2, paragraph (e), in immediate conjunction with the price shown for embalming: "Except in certain cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial."

Subd. 3. **Casket for cremation provisions; deceptive acts or practices.** In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to represent that a casket is required for cremations by state or local law or otherwise.

Subd. 4. **Casket for cremation provision; preventive measures.** To prevent deceptive acts or practices, funeral providers must place the following disclosure in immediate conjunction with the prices shown for cremations: "If you want to arrange a cremation, you can use a cremation container. A cremation container is a combustible, closed container resistant to the leakage of bodily fluids, that encases the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify containers provided)." This disclosure is required only if the funeral provider arranges direct cremations.

Subd. 5. **Rental caskets; deceptive acts or practices.** In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to fail to disclose that a casket has been used in a previous funeral ceremony when that is the case.

Subd. 6. **Rental caskets; preventive measures.** To prevent deceptive acts or practices, funeral providers must place the following disclosure in immediate conjunction with the prices shown for funeral services where a casket may be rented rather than purchased: "If you choose a funeral service where a rental casket is provided, the casket used for the funeral service may have been used in a previous funeral service. If the casket has been used in a previous funeral service, the interior lining has either been replaced or thoroughly cleaned."

Subd. 7. **Outer burial container provisions; deceptive acts or practices.** In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when that is not the case or to fail to disclose to consumers arranging funerals that state law or local law does not require the purchase of an outer burial container.

Subd. 8. **Outer burial container provisions; preventive requirements.** To prevent deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, described in section 149A.71, subdivision 2, paragraph (c), or, if the prices of outer burial containers are listed on the general price list, described in section 149A.71, subdivision 2, paragraph (e), in immediate conjunction with those prices: "In most areas of the country, state or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so

that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements.”

Subd. 9. General provisions on legal and cemetery requirements; deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when that is not the case.

Subd. 10. General provisions on legal and cemetery requirements; preventive requirements. To prevent deceptive acts or practices, funeral providers must identify and briefly describe in writing on the statement of funeral goods and services selected, as described in section 149A.71, subdivision 2, paragraph (f), any legal, cemetery, or crematory requirement which the funeral provider represents to consumers as compelling the purchase of funeral goods or funeral services for the funeral which that consumer is arranging.

Subd. 11. Provisions on preservative and protective value claims; deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long term or indefinite time or to represent that funeral goods have protective features, beyond a lid sealing casket, or will protect the body from grave site substances, when that is not the case.

Subd. 12. Cash advance provisions; deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when that is not the case or to fail to disclose to the consumer arranging the funeral that the price charged for a cash advance item is not the same as the cost to the funeral provider when that is not the case.

Subd. 13. Cash advance provisions; preventive requirements. To prevent deceptive acts or practices, funeral providers must place the following sentence in the itemized statement of funeral goods and services selected, in immediate conjunction with the list of itemized cash advance items required by section 149A.71, subdivision 2, paragraph (f): “We charge you for our services in obtaining (specify cash advance items provided).”, if the funeral provider makes a charge upon, or receives and retains a rebate, commission, or trade or volume discount upon a cash advance item.

History: 1997 c 215 s 29

149A.73 FUNERAL INDUSTRY PRACTICES; REQUIRED PURCHASE OF FUNERAL GOODS OR FUNERAL SERVICES.

Subdivision 1. Casket for cremation provisions; deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to require that a casket be purchased for cremation.

Subd. 2. Casket for cremation; preventive requirements. To prevent unfair or deceptive acts or practices, if funeral providers arrange cremations, they must make a cremation container available for cremations.

Subd. 3. Other required purchases of funeral goods or funeral services; deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to condition the furnishing of any funeral good or funeral service to a consumer arranging a funeral upon the purchase of any other funeral good or funeral service, except as may be otherwise required by law or to charge any fee as a condition to furnishing any funeral goods or funeral services to a consumer arranging a funeral, other than the fees for services of funeral director and staff, other funeral services and funeral goods selected by the purchaser, and other funeral goods or services required to be purchased, as explained on the itemized statement in accordance with section 149A.72, subdivision 10.

Subd. 4. Other required purchases of funeral goods or funeral services; preventive requirements. To prevent unfair or deceptive acts or practices, funeral providers must place the following disclosure in the general price list, immediately above the prices required by section 149A.71, subdivision 2, paragraph (e), clauses (4) to (10): “The goods and services

shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean that you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected." However, if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence "However, any funeral arrangements you select will include a charge for our basic services." between the second and third sentences of the sentences specified in this subdivision. The statement may include the phrase "and overhead" after the word "services" if the fee includes a charge for the recovery of unallocated funeral overhead. If the funeral provider does not include this disclosure statement, then the following disclosure statement must be placed in the statement of funeral goods and services selected, as described in section 149A.71, subdivision 2, paragraph (f): "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below." A funeral provider is not in violation of this subdivision by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide

History: 1997 c 215 s 30

149A.74 FUNERAL INDUSTRY PRACTICES; SERVICES PROVIDED WITHOUT PRIOR APPROVAL.

Subdivision 1. Services provided without prior approval; deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for any funeral provider to embalm a dead human body unless state or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which might be made, or prior approval for embalming has been obtained from an individual legally authorized to make such a decision, or the funeral provider is unable to contact the legally authorized individual after exercising due diligence, has no reason to believe the legally authorized individual does not want embalming performed, and obtains subsequent approval for embalming already performed. In seeking approval to embalm, the funeral provider must disclose that embalming is not required by law except in certain circumstances; that a fee will be charged if a funeral is selected which requires embalming, such as a funeral with viewing; and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

Subd. 2. Services provided without prior approval; preventive requirement. To prevent unfair or deceptive acts or practices, funeral providers must include on the itemized statement of funeral goods or services, as described in section 149A.71, subdivision 2, paragraph (f), the statement "If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as direct cremation or immediate burial. If we charged for embalming, we will explain why below."

History: 1997 c 215 s 31

149A.75 FUNERAL INDUSTRY PRACTICES; RETENTION OF DOCUMENTS.

Funeral providers must retain and make available for inspection true and accurate copies of the applicable price lists specified in section 149A.71, subdivision 2, paragraphs (c) to (e), for a minimum of one calendar year after the date of their last distribution to customers. In addition, funeral providers must retain a copy of each statement of funeral goods and services selected, as described in section 149A.71, subdivision 2, paragraph (f), for a minimum of three calendar years from the date of the arrangement conference. Following this period and subject to any other laws requiring retention of records, the funeral provider may then place the records in storage or reduce them to microfilm, microfiche, laser disc, or any other method that can produce an accurate reproduction of the original record, for retention for a period of ten calendar years from the date of the arrangement conference. At the end of this period and subject to any other laws requiring retention of records, the funeral provider may destroy the records by shredding, incineration, or any other manner that protects the privacy of the individuals identified in the records.

History: 1997 c 215 s 32

149A.76 FUNERAL INDUSTRY PRACTICES; COMPREHENSION OF DISCLOSURES.

Funeral providers must make all disclosures required under sections 149A.71 to 149A.74 in a clear and conspicuous manner

History: 1997 c 215 s 33

149A.80 DEATH; RIGHT TO CONTROL AND DUTY OF DISPOSITION.

Subdivision 1. Advance directives and will of decedent. A person may direct the preparation for, type, or place of that person's final disposition, either by oral or written instructions. The person or persons otherwise entitled to control the final disposition under this chapter shall faithfully carry out the reasonable and otherwise lawful directions of the decedent to the extent that the decedent has provided resources for the purpose of carrying out the directions. If the instructions are contained in a will, they shall be immediately carried out, regardless of the validity of the will in other respects or of the fact that the will may not be offered for or admitted to probate until a later date, subject to other provisions of this chapter or any other law of this state. This subdivision shall be administered and construed so that the reasonable and lawful instructions of the decedent or the person entitled to control the final disposition shall be faithfully and promptly performed.

Subd. 2 Determination of right to control and duty of disposition. The right to control the disposition of the remains of a deceased person, including the location and conditions of final disposition, unless other directions have been given by the decedent pursuant to subdivision 1, vests in, and the duty of final disposition of the body devolves upon, the following in the order named:

- (1) the person appointed in a dated written instrument signed by the decedent. Written instrument includes, but is not limited to, a health care directive executed under chapter 145C. Written instrument does not include a durable or nondurable power of attorney which terminates on the death of the principal pursuant to sections 523.08 and 523.09;
- (2) the surviving, legally recognized spouse;
- (3) the surviving biological or adopted child or children of the decedent over the age of majority, provided that, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by the child or children who represent that they are the sole surviving child, or that they constitute a majority of the surviving children;
- (4) the surviving parent or parents of the decedent;
- (5) the surviving biological or adopted sibling or siblings of the decedent over the age of majority, provided that, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by the sibling or siblings who represent that they are the sole surviving sibling, or that they constitute a majority of the surviving siblings;
- (6) the person or persons respectively in the next degree of kinship in the order named by law to inherit the estate of the decedent; and
- (7) the appropriate public or court authority, as required by law.

For purposes of this subdivision, the appropriate public or court authority includes the county board of the county in which the death occurred if the person dies without apparent financial means to provide for final disposition or the district court in the county in which the death occurred

Subd. 3. Estranged persons. Where there is only one person in a degree of relationship to the decedent described in subdivision 2, clauses (1) to (6), and a district court pursuant to subdivision 5, determines that the person and the decedent were estranged at the time of death, the right to control and the duty of disposition shall devolve to the person or persons in the next degree of relationship pursuant to subdivision 2, clauses (1) to (6). For purposes of this subdivision, "estranged" means having a relationship characterized by mutual enmity, hostility, or indifference.

Subd. 4. Refusal of right to control and duty of disposition. If a person or persons to whom the right to control and duty of disposition devolve pursuant to subdivision 2, clauses (1) to (6), refuses to accept or declines to act upon the right or duty, that right and duty shall pass as follows:

(1) to another person or persons with the same degree of relationship to the decedent as the person or persons refusing to accept or declining to act; or

(2) to the person or persons in the next degree of relationship to the decedent pursuant to subdivision 2, clauses (1) to (6).

Subd. 5. Disputes. When a dispute exists regarding the right to control or duty of disposition, the parties in dispute or the mortician or funeral director may file a petition in the district court in the county of residence of the decedent requesting that the court make a determination in the matter. Should the right to control and duty of disposition devolve to more than one person with the same degree of relationship to the decedent and those persons cannot, by majority vote, make a decision regarding arrangements and final disposition and a district court has been petitioned to make a determination, the court shall consider the following factors in making its determination:

(1) the reasonableness, practicality, and resources available for payment of the proposed arrangements and final disposition;

(2) the degree of the personal relationship between the decedent and each of the persons in the same degree of relationship to the decedent;

(3) the expressed wishes and directions of the decedent and the extent to which the decedent has provided resources for the purpose of carrying out the wishes or directions; and

(4) the degree to which the arrangements and final disposition will allow for participation by all who wish to pay respect to the decedent.

Subd. 6. Control by funeral director or mortician. A funeral director or mortician shall have complete authority to control the final disposition and to proceed under this chapter to recover reasonable charges for the final disposition when both of the following apply:

(1) the funeral director or mortician has actual knowledge that none of the persons described in subdivision 2, clauses (1) to (6), exist or that none of the persons so described can be found after reasonable inquiry or contacted by reasonable means; and

(2) the appropriate public or court authority fails to assume responsibility for disposition of the remains within 36 hours after having been given written notice of the facts. Written notice may be delivered by hand, United States mail, facsimile transmission, or telegraph.

Subd. 7. Immunity. A funeral director or mortician shall not be subject to criminal prosecution or civil liability for carrying out the otherwise lawful instructions of the decedent or the person or persons whom the funeral director or mortician reasonably believes is entitled to control the final disposition.

Subd. 8. Liability for cost of final disposition. In addition to separate contractual obligations, the liability for the reasonable cost of final disposition devolves upon the estate of the decedent, regardless of whether testate or intestate, and the distributees of the estate pursuant to chapter 524, the Uniform Probate Code. In the case of persons who die without apparent financial means to provide for final disposition, control of final disposition and liability devolves to the county board of the county in which the death occurred, pursuant to section 261.035. In the case of unclaimed bodies delivered for dissection pursuant to section 525.9213 and anatomical gifts of the entire body made pursuant to section 149A.81, subdivision 2, subject to the terms of the gift, liability for transportation and final disposition shall be borne by the institution receiving the body.

Subd. 9. Interference with body or final disposition. Any person that arrests, attaches, detains, or claims to detain any human remains for any debt or demand, or upon any pretended lien or charge, or who, without authority of law, obstructs or detains a person charged with the duty or engaged in the final disposition of a dead human body, or fails to release any dead human body upon the receipt of authorization for the release signed by a person or persons entitled to custody of the body is guilty of a misdemeanor. Criminal prosecution shall not preclude the commissioner from taking any other lawful disciplinary action.

History: 1997 c 215 s 34; 1998 c 399 s 27

149A.81 ANATOMICAL GIFTS.

Subdivision 1. **Duty of disposition; gift of part of a body.** This chapter does not apply to or interfere with the making of an anatomical gift under sections 525.921 to 525.924, except as provided in this subdivision.

When the anatomical gift is of a part of a body, after procurement of the gift organ or organs, custody of the remainder of the body vests in the person or persons under legal obligation to dispose of the body under section 149A.80. Once an anatomical gift has been made and custody of the body has passed from the donee to the person or persons lawfully entitled or obligated to dispose of the body, the provisions of this chapter apply.

Subd. 2. **Duty of disposition; gift of whole body.** When the gift is of the whole body, after it has served the purpose of the gift, subject to the terms of the gift, the body shall be decently buried in a public or private cemetery or cremated and disposed of in any lawful manner and the expense of transporting and burying or cremating the body shall be borne by the donee of the body. Where the donee allows embalming of the body and a funeral service prior to delivery of the body for gift purposes, this chapter applies until the body is delivered to the donee pursuant to the gift. Where the donee takes immediate delivery of the body pursuant to the gift, the donee must complete and file the death certificate. If the donee does not accept the gift of the body, the right to control, duty of disposition, and liability for disposition shall be in accordance with section 149A.80.

History: 1997 c 215 s 35

149A.90 DEATH; REGISTRATION AND REMOVAL FROM PLACE OF DEATH.

Subdivision 1. **Death certificate.** Except as provided in this section, a death certificate must be completed and filed for every known death by the mortician, funeral director, or other person lawfully in charge of the disposition of the body.

Subd. 2. **Removal from place of death.** No person subject to regulation under this chapter shall remove or cause to be removed any dead human body from the place of death without being licensed by the commissioner. Every dead human body shall be removed from the place of death by a licensed mortician or funeral director, except as provided in section 149A.01, subdivision 3.

Subd. 3. **Referrals to coroner or medical examiner.** The mortician, funeral director, or other person lawfully in charge of the disposition of the body shall notify the coroner or medical examiner before moving a body from the site of death in any case:

- (1) where the person is unable to obtain firm assurance from the physician in attendance that the medical certification will be signed;
- (2) when circumstances suggest that the death was caused by other than natural causes;
- (3) where deaths occur under mysterious or unusual circumstances;
- (4) where there is a violent death, whether homicidal, suicidal, or accidental, including but not limited to: thermal, chemical, electrical, or radiational injury; and deaths due to criminal abortion, whether self-induced or not;
- (5) where the body is to be disposed of in some manner which prevents later examination, including but not limited to, cremation, dissection, or burial at sea, or
- (6) when the decedent was an inmate of a public institution who was not hospitalized for organic disease.

Subd. 4. **Documentation of removal.** No dead human body shall be removed from the place of death by a mortician or funeral director without the completion of a removal certification and, where possible, presentation of a copy of that certification to the person or a representative of the legal entity with physical or legal custody of the body at the death site. The removal certification may be on a form provided by the commissioner or on any other form that contains, at least, the following information:

- (1) the name of the deceased, if known;
- (2) the date and time of removal;
- (3) a brief listing of the type and condition of any personal property removed with the body;

- (4) the location to which the body is being taken;
- (5) the name, business address, and license number of the individual making the removal; and
- (6) the signatures of the individual making the removal and, where possible, the individual or representative of the legal entity with physical or legal custody of the body at the death site.

Subd. 5. **Retention of documentation of removal.** A copy of the removal certification shall be given, where possible, to the person or representative of the legal entity having physical or legal custody of the body at the death site. The original removal certification shall be retained by the individual making the removal and shall be kept on file, at the funeral establishment or crematory to which the body was taken, for a period of three calendar years following the date of the removal. Following this period, and subject to any other laws requiring retention of records, the funeral establishment or crematory may then place the records in storage or reduce them to microfilm, microfiche, laser disc, or any other method that can produce an accurate reproduction of the original record, for retention for a period of ten calendar years from the date of the removal of the body. At the end of this period and subject to any other laws requiring retention of records, the funeral establishment or crematory may destroy the records by shredding, incineration, or any other manner that protects the privacy of the individuals identified in the records.

Subd. 6. **Removal procedure.** Every individual removing a dead human body from the place of death shall use universal precautions and otherwise exercise all reasonable precautions to minimize the risk of transmitting any communicable disease from the body. Before removal, the body shall be wrapped in a sheet that is impervious to liquids, covered in such a manner that the body cannot be viewed, encased in a secure pouch, and placed on a regulation ambulance cot or on an aircraft ambulance stretcher. Any dead human body measuring 36 inches or less in length may be removed after having been properly wrapped, covered, and encased, but does not need to be placed on an ambulance cot or aircraft ambulance stretcher.

Subd. 7. **Conveyances permitted for removal.** A dead human body may be transported from the place of death by any vehicle that meets the following standards:

- (1) promotes respect for and preserves the dignity of the dead human body;
- (2) shields the body from being viewed from outside of the conveyance;
- (3) has ample enclosed area to accommodate an ambulance cot or aircraft ambulance stretcher in a horizontal position;
- (4) is so designed to permit loading and unloading of the body without excessive tilting of the cot or stretcher; and
- (5) if used for the transportation of more than one dead human body at one time, the vehicle must be designed so that a body or container does not rest directly on top of another body or container and that each body or container is secured to prevent the body or container from excessive movement within the conveyance. A dead human body measuring 36 inches or less in length may be transported from the place of death by passenger automobile. For purposes of this subdivision, a passenger automobile is a vehicle designed and used for carrying not more than ten persons, but excludes motorcycles and motor scooters.

Subd. 8. **Proper holding facility required.** The funeral establishment or crematory to which a dead human body is taken shall have an appropriate holding facility for storing the body while awaiting final disposition. The holding facility must be secure from access by anyone except the authorized personnel of the funeral establishment or crematory, preserve the dignity of the remains, and protect the health and safety of the funeral establishment or crematory personnel.

History: 1997 c 215 s 36

149A.91 PREPARATION OF BODY.

Subdivision 1. **Universal precautions.** In handling and preparing dead human bodies for final disposition, any person who comes in direct contact with an unembalmed dead human body or who enters a room where dead human bodies are embalmed, shall use universal precautions and otherwise exercise all reasonable precautions to minimize the risk of trans-

MINNESOTA STATUTES 1998

1287

MORTUARY SCIENCE; DISPOSITION OF DEAD BODIES 149A.91

mitting any communicable disease from the body. All persons present in a preparation and embalming room while a body is being prepared for final disposition must be attired in accordance with all applicable state and federal regulations regarding the control of infectious disease and occupational and workplace health and safety.

Subd. 2. Preparation procedures; access to preparation room. The preparation of a dead human body for final disposition shall be performed in privacy. No person shall be permitted to be present in the preparation room while a dead human body is being embalmed, washed, or otherwise prepared for final disposition, except:

- (1) licensed morticians or funeral directors and their authorized agents and employees;
- (2) registered interns or students as described in subdivision 6;
- (3) public officials or representatives in the discharge of their official duties;
- (4) licensed medical personnel; and

(5) members of the immediate family of the deceased, their designated representatives, and any person receiving written authorization to be present. The written authorization must be dated and signed by the person with legal right to control the disposition and must be presented to the mortician or intern or practicum student who will be performing the procedure. The written authorization shall become part of the required records pursuant to subdivision 10.

Subd. 3. Embalming required. A dead human body must be embalmed by a licensed mortician in the following circumstances:

- (1) if the body will be transported by public transportation;
- (2) if final disposition will not be accomplished within 72 hours after death or release of the body by a competent authority with jurisdiction over the body or the body will be lawfully stored for final disposition in the future, except as provided in section 149A.94, subdivision 1;
- (3) if the body will be publicly viewed; or
- (4) if so ordered by the commissioner of health for the control of infectious disease and the protection of the public health.

Subd. 4. Authorization to embalm. No dead human body shall be embalmed without written authorization. Written authorization to embalm a dead human body must be obtained from the individual lawfully entitled to custody of the body or the individual's legal designee as soon as is practicable following the death. Oral permission to embalm shall constitute an effective authorization to embalm if the individual seeking permission uses the word "embalm," briefly explains the nature of embalming, and briefly outlines the existing laws regulating the timing and reasons for embalming, and obtains written authorization as soon as is possible thereafter. The original written authorization to embalm shall be maintained in the records of the funeral establishment that causes the embalming to be performed and a copy of the authorization must be delivered to the person who has legal right to control the disposition or that person's legal designee. Predeath directives authorizing embalming, duly executed by the deceased, shall be given full legal effect and shall constitute an effective authorization to embalm under this subdivision. When embalming is required by subdivision 3, permission to embalm shall, as a matter of law, be implied.

Subd. 5. Authorization to embalm; required form. A written authorization to embalm must contain the following information:

- (1) the date of the authorization;
- (2) the name of the funeral establishment that will perform the embalming;
- (3) the name, address, and relationship to the decedent of the person signing the authorization;
- (4) an acknowledgment of the circumstances where embalming is required by law under subdivision 3;
- (5) a statement certifying that the person signing the authorization is the person with legal right to control the disposition of the body prescribed in section 149A.80 or that person's legal designee;
- (6) the signature of the person requesting the authorization and that person's relationship to the funeral establishment where the procedure will be performed; and

MINNESOTA STATUTES 1998

(7) the signature of the person who has the legal right to control the disposition or their legal designee.

Subd. 6. **Mortician required.** Embalming of a dead human body shall be performed only by an individual holding a license to practice mortuary science in Minnesota, a registered intern pursuant to section 149A.20, subdivision 6, or a student registered for a practicum through an accredited college or university or a college of funeral service education accredited by the American Board of Funeral Service Education. An individual who holds a funeral director only license issued pursuant to section 149A.40, subdivision 2, is prohibited from engaging in the embalming of a dead human body.

Subd. 7. **Embalming chemicals; prohibited compounds.** Embalming fluid containing compounds of arsenic, mercury, zinc, silver, or other poisonous metals shall not be sold in Minnesota or used for or in the embalming of any dead human body.

Subd. 8. **Minimum standards for embalming.** In every case where a dead human body is embalmed, standards of performance known to and accepted in the practice of mortuary science shall be followed to ensure the inhibition of pathogenic organisms in the dead human body.

Subd. 9. **Embalmed bodies awaiting disposition.** All embalmed bodies awaiting final disposition shall be kept in an appropriate holding facility or preparation and embalming room. The holding facility must be secure from access by anyone except the authorized personnel of the funeral establishment, preserve the dignity and integrity of the body, and protect the health and safety of the personnel of the funeral establishment.

Subd. 10. **Required records.** Every funeral establishment that causes a dead human body to be embalmed shall create and maintain on its premises or other business location in Minnesota an accurate record of every embalming performed. The record shall include all of the following information for each embalming:

- (1) the name of the decedent and the date of death;
- (2) the date the funeral establishment took physical custody of the body and, if applicable, the name of the person releasing the body to the custody of the funeral establishment;
- (3) the reason for embalming the body;
- (4) the name, address, and relationship to the decedent of the person who authorized the embalming of the body;
- (5) the date the body was embalmed, including the time begun and the time of completion;
- (6) the name, license number, and signature of the mortician who performed or personally supervised the intern or student who performed the embalming;
- (7) the name, permit number, if applicable, and signature of any intern or practicum student that participates in the embalming of a body, whether the intern or practicum student performs part or all of the embalming; and
- (8) the original written authorization to embalm and any other supporting documentation that establishes the legal right of the funeral establishment to physical custody of the body and to embalm the body.

Subd. 11. **Retention of records.** Records required under subdivision 10 shall be maintained for a period of three calendar years after the embalming of the body. Following this period and subject to any other laws requiring retention of records, the funeral establishment may then place the records in storage or reduce them to microfilm, microfiche, laser disc, or any other method that can produce an accurate reproduction of the original record, for retention for a period of ten calendar years from the date of the embalming of the body. At the end of this period and subject to any other laws requiring retention of records, the funeral establishment may destroy the records by shredding, incineration, or any other manner that protects the privacy of the individuals identified in the records.

History: 1997 c 215 s 37

149A.92 PREPARATION AND EMBALMING ROOM.

Subdivision 1. **Exemption.** All funeral establishments having a preparation and embalming room that has not been used for the preparation or embalming of a dead human body

in the 12 calendar months prior to July 1, 1997, are exempt from the minimum requirements in subdivisions 2 to 6, except as provided in this section. At the time that ownership of a funeral establishment changes, the physical location of the establishment changes, or the building housing the funeral establishment or business space of the establishment is remodeled the existing preparation and embalming room must be brought into compliance with the minimum standards in this section.

Subd. 2. Minimum requirements; general. Every funeral establishment must have a preparation and embalming room. The room shall be of sufficient size and dimensions to accommodate a preparation or embalming table, an open fixture with water connections, and an instrument table, cabinet, or shelves.

Subd. 3. Minimum requirements; lighting and ventilation. The room shall be properly lit and ventilated with an exhaust fan that provides at least 12 air changes per hour and is located so that air is drawn away from the person performing the preparation.

Subd. 4. Minimum requirements; plumbing connections. All plumbing fixtures, water supply lines, plumbing vents, and waste drains shall be properly vented and connected pursuant to the Minnesota Plumbing Code. Where a municipal sewerage system is available, the building drainage system shall be discharged into that system. Where a municipal system is not available, the building system must be discharged into an approved private system of waste disposal.

Subd. 5. Minimum requirements; flooring, walls, ceiling, doors, and windows. All preparation and embalming rooms shall have nonporous flooring, so that a sanitary condition is provided. The walls and ceiling of the preparation and embalming room shall run from floor to ceiling and be covered with tile, or by plaster or sheetrock painted with washable paint, or other appropriate material so that a sanitary condition is provided. The doors, walls, ceiling, and windows shall be constructed to prevent odors from entering any other part of the building. All windows or other openings to the outside must be screened and all windows must be treated in a manner that prevents viewing into the preparation room from the outside.

Subd. 6. Minimum requirements; equipment and supplies. The preparation and embalming room must have a preparation and embalming table and a functional aspirator. The preparation and embalming table shall have a nonporous top, preferably of rustproof metal or porcelain, with raised edges around the top of the entire table and a drain opening at the lower end. Where embalming is actually performed in the room, the room must be equipped with a functional method for injection of fluids, an eye wash station, and sufficient supplies and instruments for normal operation. All supplies must be stored and used in accordance with all applicable state and federal regulations for occupational health and safety.

Subd. 7. Access and privacy. The preparation and embalming room must be private and have no general passageway through it. The room shall, at all times, be secure from the entrance of unauthorized persons. Authorized persons are those persons described in section 149A.91, subdivision 2. Each door allowing ingress or egress shall carry a sign that indicates that the room is private and access is limited. All authorized persons who are present in or enter a preparation and embalming room while a body is being prepared for final disposition must be attired in accordance with all applicable state and federal regulations regarding the control of infectious disease and occupational and workplace health and safety.

Subd. 8. Sanitary conditions and permitted use. The preparation and embalming room and all fixtures, equipment, instruments, receptacles, clothing, and other appliances or supplies stored or used in the room must be maintained in a clean and sanitary condition at all times. A preparation and embalming room shall not be used for any other purposes.

Subd. 9. Waste disposal. Infectious and pathological waste generated in preparation of the body shall be handled and disposed of according to the Infectious Waste Control Act, sections 116.75 to 116.83, and packaged for disposal in the manner prescribed by rules.

Subd. 10. Occupational and workplace safety. All applicable provisions of state and federal regulations regarding exposure to workplace hazards and accidents shall be followed in order to protect the health and safety of all authorized persons who enter the preparation and embalming room.

History: 1997 c 215 s 38

149A.93 TRANSPORTATION OF DEAD HUMAN BODIES.

Subdivision 1. **Permits required.** After removal from the place of death to any location where the body is held awaiting final disposition, further transportation of the body shall require a disposition or transit permit issued by the local registrar of the place of death, a subregistrar as defined by Minnesota Rules, part 4600.0100, subpart 5, or, if necessary to avoid delay, the commissioner. Permits shall contain the information required on the permit form as furnished by the commissioner and shall be signed by the local registrar or subregistrar and the person in legal custody of the body, and, where appropriate, the mortician, intern, or practicum student who embalmed the body, the person in charge of the conveyance in which the body will be moved, or the person in charge of the place of final disposition. Where a funeral establishment name is used in signing a permit, it must be supported by the personal signature of a licensee employed by the funeral establishment.

Subd. 2. **Transit permit.** A transit permit shall be required when a body is to be

(1) moved within a registration district and legal and physical custody of the body is transferred;

(2) removed from a registration district;

(3) removed from the county where the death occurred;

(4) transported by public transportation; or

(5) removed from the state.

Subd. 3. **Disposition permit.** A disposition permit shall be required before a body can be buried, entombed, or cremated, or when a body will be retained for more than five calendar days. No disposition permit shall be issued until a death certificate has been completed or the issuing authority receives firm assurances that the death certificate will be completed within a reasonable amount of time not to exceed seven calendar days from the issuance of the permit.

Subd. 4. **Possession of permit.** Until the body is delivered for final disposition, the permit shall be in possession of the person in physical or legal custody of the body, or attached to the transportation container which holds the body. At the place of final disposition, legal custody of the body shall pass with the filing of the disposition permit with the person in charge of that place, the health board authorized under section 145A.04, where local disposition permits are required, or the commissioner where there is no legal entity in charge of the place of final disposition.

Subd. 5. **Death outside state; disposition permit.** When a death occurs outside of the state and the body travels into or through this state, the body must be accompanied by a permit for burial, removal, or other disposition issued in accordance with the laws and rules of the state where the death occurred. The properly issued permit from the state where the death occurred shall authorize the transportation of the body into or through this state, but before final disposition in this state, a separate Minnesota disposition permit must be issued and filed, together with the foreign permit, according to subdivision 4.

Subd. 6. **Conveyances permitted for transportation.** A dead human body may be transported by means of public transportation provided that the body must be properly embalmed and encased in an appropriate container, or by any private vehicle or aircraft that meets the following standards:

(1) promotes respect for and preserves the dignity of the dead human body;

(2) shields the body from being viewed from outside of the conveyance;

(3) has ample enclosed area to accommodate a regulation ambulance cot, aircraft ambulance stretcher, casket, alternative container, or cremation container in a horizontal position;

(4) is designed to permit loading and unloading of the body without excessive tilting of the casket, alternative container, or cremation container; and

(5) if used for the transportation of more than one dead human body at one time, the vehicle must be designed so that a body or container does not rest directly on top of another body or container and that each body or container is secured to prevent the body or container from excessive movement within the conveyance.

Subd. 7. **Transportation procedures.** When a dead human body is transported by public transportation, it must be properly embalmed and enclosed in a casket or alternative con-

tainer and an appropriate outside shipping container. When transportation is by any private vehicle or aircraft, the outside shipping container may be omitted or the casket or alternative container and the outside container may both be omitted and, in such case, the body shall be wrapped in a sheet that is impervious to liquids, covered in such a manner that the body cannot be viewed, encased in a secure pouch, and placed on a regulation ambulance cot or on an aircraft ambulance stretcher.

Subd. 8. Who may transport. Subject to section 149A.09, a dead human body need not be transported under the direct, personal supervision of a licensed mortician or funeral director. In circumstances where there is no reasonable probability that unlicensed personnel will encounter family members or other persons with whom funeral arrangements are normally made by licensed morticians or funeral directors, a dead human body may be transported without the direct, personal supervision of a licensed mortician. Any inadvertent contact with family members or other persons as described above shall be restricted to unlicensed personnel identifying the employer to the person encountered, offering to arrange an appointment with the employer for any person who indicates a desire to make funeral arrangements for the deceased, and making any disclosure to the person that is required by state or federal regulations. A licensed mortician or funeral director who directs the transport of a dead human body without providing direct, personal supervision shall be held strictly accountable for compliance with this chapter.

Subd. 9. Embalming required. Except as provided in section 149A.94, subdivision 2, a dead human body that is being transported by public transportation or will not be buried, cremated, or entombed within 72 hours following death or release by a competent authority with jurisdiction over the body must be properly embalmed.

History: 1997 c 215 s 39

149A.94 FINAL DISPOSITION.

Subdivision 1. Generally. Every dead human body lying within the state, except those delivered for dissection pursuant to section 525.9213, those delivered for anatomical study pursuant to section 149A.81, subdivision 2, or lawfully carried through the state for the purpose of disposition elsewhere; and the remains of any dead human body after dissection or anatomical study, shall be decently buried, entombed, or cremated, within a reasonable time after death. Where final disposition of a body will not be accomplished within 72 hours following death or release of the body by a competent authority with jurisdiction over the body, the body must be properly embalmed. For purposes of this section, refrigeration is not considered a form of preservation or disinfection and does not alter the 72-hour requirement, except as provided in subdivision 2.

Subd. 2. Cremation exceptions. The 72-hour requirement does not apply when a body properly delivered to a crematory cannot be cremated within the time constraints imposed by law for reasons of mechanical failure of the cremation chamber or timeliness of delivery. Should a crematory accept delivery of a body later than 67 hours following the death or release of the body by a competent authority with jurisdiction over the body or experience such mechanical failure, the properly delivered body, whether embalmed or not, must be maintained in a secure holding facility at a temperature within the range of 34 and 40 degrees Fahrenheit until cremation can be accomplished. If cremation cannot be accomplished within five calendar days after death or release of the body, the crematory must obtain a permit to retain the body pursuant to section 149A.93, subdivision 3. No body may be kept in refrigeration for a period that exceeds seven calendar days from receipt of the body by the crematory. If cremation cannot be accomplished within the seven calendar day period, arrangements must be made to have the body transported to an alternate crematory for final disposition.

Subd. 3. Permit required. No dead human body shall be buried, entombed, or cremated without the filing of a properly issued permit with the person in charge of the place of final disposition. Where a dead human body will be transported out of this state for final disposition, the body must be accompanied by a properly issued disposition permit.

Subd. 4. Cremation. Inurnment of cremated remains and release to an appropriate party is considered final disposition and no further permits or authorizations are required for

transportation, interment, entombment, or placement of the cremated remains, except as provided in section 149A.95, subdivision 16.

History: 1997 c 215 s 40

149A.95 CREMATORIES AND CREMATION.

Subdivision 1. **License required.** No person shall cremate a dead human body or cause any dead human body to be cremated in this state without being licensed by the commissioner of health.

Subd. 2. **General requirements.** Any building to be used as a crematory must comply with all applicable local and state building codes, zoning laws and ordinances, and environmental standards. A crematory must have, on site, a motorized mechanical device for processing cremated remains and must have, in the building or adjacent to it, a holding facility for the retention of dead human bodies awaiting cremation. The holding facility must be secure from access by anyone except the authorized personnel of the crematory, preserve the dignity of the remains, and protect the health and safety of the crematory personnel.

Subd. 3. **Unlicensed personnel.** A licensed crematory may employ unlicensed personnel, provided that all applicable provisions of this chapter are followed. It is the duty of the licensed crematory to provide proper training for all unlicensed personnel and the licensed crematory shall be strictly accountable for compliance with this chapter and other applicable state and federal regulations regarding occupational and workplace health and safety.

Subd. 4. **Authorization to cremate required.** No crematory shall cremate or cause to be cremated any dead human body without receiving written authorization to do so from the person who has the legal right to control disposition as described in section 149A.80 or the person's legal designee. The written authorization must include:

- (1) the name of the deceased and the date of death;
- (2) a statement authorizing the crematory to cremate the body;
- (3) the name, address, relationship to the deceased, and signature of the person with legal right to control final disposition or a legal designee;
- (4) certification that the body does not contain any implanted mechanical or radioactive device, such as a heart pacemaker, that may create a hazard when placed in the cremation chamber;
- (5) authorization to remove the body from the container in which it was delivered, if that container is not appropriate for cremation, and to place the body in an appropriate cremation container and directions for the disposition of the original container;
- (6) authorization to open the cremation chamber and reposition the body to facilitate a thorough cremation and to remove from the cremation chamber and separate from the cremated remains, any noncombustible materials or items;
- (7) directions for the disposition of any noncombustible materials or items recovered from the cremation chamber;
- (8) acknowledgment that the cremated remains will be mechanically reduced to a granulated appearance and placed in an appropriate container and authorization to place any cremated remains that a selected urn or container will not accommodate into a temporary container;
- (9) acknowledgment that, even with the exercise of reasonable care, it is not possible to recover all particles of the cremated remains and that some particles may inadvertently become commingled with disintegrated chamber material and particles of other cremated remains that remain in the cremation chamber or other mechanical devices used to process the cremated remains; and
- (10) directions for the ultimate disposition of the cremated remains.

Subd. 5. **Limitation of liability.** A licensed crematory acting in good faith, with reasonable reliance upon an authorization to cremate, pursuant to an authorization to cremate, and in an otherwise lawful manner shall be held harmless from civil liability and criminal prosecution for any actions taken by the crematory.

Subd. 6. **Acceptance of delivery of body.** No dead human body shall be accepted for disposition by cremation unless encased in an appropriate cremation container or casket, ac-

MINNESOTA STATUTES 1998

1293

MORTUARY SCIENCE; DISPOSITION OF DEAD BODIES 149A.95

accompanied by a disposition permit issued pursuant to section 149A.93, subdivision 3, including a photocopy of the completed death certificate or a signed release authorizing cremation of the body received from the coroner or medical examiner, and accompanied by a cremation authorization that complies with subdivision 4. A crematory may refuse to accept delivery of a cremation container where there is:

- (1) evidence of leakage of fluids from the body;
- (2) a known dispute concerning cremation of the body delivered;
- (3) a reasonable basis for questioning any of the representations made on the written authorization to cremate; or
- (4) any other lawful reason.

Subd. 7 Handling of dead human bodies. All crematory employees handling dead human bodies shall use universal precautions and otherwise exercise all reasonable precautions to minimize the risk of transmitting any communicable disease from the body. No dead human body shall be removed from the container in which it is delivered to the crematory without express written authorization of the person with legal right to control the disposition. If, after accepting delivery of a body for cremation, it is discovered that the body contains an implanted mechanical or radioactive device, that device must be removed from the body by a licensed mortician or physician prior to cremation.

Subd. 8. Identification of body. All licensed crematories shall develop, implement, and maintain an identification procedure whereby dead human bodies can be identified from the time the crematory accepts delivery of the remains until the cremated remains are released to an authorized party. After cremation, an identifying disk, tab, or other permanent label shall be placed within the cremated remains container before the cremated remains are released from the crematory. Each identification disk, tab, or label shall have a number that shall be recorded on all paperwork regarding the decedent. This procedure shall be designed to reasonably ensure that the proper body is cremated and that the cremated remains are returned to the appropriate party.

Subd. 9. Cremation chamber for human remains. A licensed crematory shall knowingly cremate only dead human bodies or human remains in a cremation chamber, along with the cremation container or casket and a sheet or pouch used for disease control.

Subd. 10 Cremation procedures; privacy. The final disposition of dead human bodies by cremation shall be done in privacy. Unless there is written authorization from the person with the legal right to control the disposition, only authorized crematory personnel shall be permitted in the cremation area while any dead human body is in the cremation area awaiting cremation, in the cremation chamber, being removed from the cremation chamber, or being processed and placed in a cremated remains container.

Subd. 11. Cremation procedures; commingling of remains prohibited. Except with the express written permission of the person with legal right to control the disposition, no crematory shall cremate more than one dead human body at the same time and in the same cremation chamber, or introduce a second dead human body into a cremation chamber until reasonable efforts have been employed to remove all fragments of the preceding cremated remains, or cremate a dead human body and other human remains at the same time and in the same cremation chamber. This section does not apply where commingling of human remains during cremation is otherwise provided by law. The fact that there is incidental and unavoidable residue in the cremation chamber used in a prior cremation is not a violation of this subdivision.

Subd. 12. Cremation procedures; removal from cremation chamber. Upon completion of the heat and flame reduction process, reasonable efforts shall be made to remove from the cremation chamber all of the recoverable cremated human remains and noncombustible materials or items. If possible, the noncombustible materials or items shall be separated from the cremated human remains and disposed of, in any lawful manner, by the crematory. The cremated human remains shall be placed in an appropriate container to be transported to the processing area.

Subd. 13. Cremation procedures; commingling of cremated remains prohibited. Except with the express written permission of the person with legal right to control the disposition or otherwise provided by law, no crematory shall mechanically process the cre-

mated human remains of more than one body at a time in the same mechanical processor, or introduce the cremated human remains of a second body into a mechanical processor until processing of any preceding cremated human remains has been terminated and reasonable efforts have been employed to remove all fragments of the preceding cremated remains. The fact that there is incidental and unavoidable residue in the mechanical processor or any container used in a prior cremation is not a violation of this provision.

Subd. 14. Cremation procedures; processing cremated remains. The cremated human remains shall be reduced by a motorized mechanical device to a granulated appearance appropriate for final disposition and placed in a cremated remains container along with the appropriate identifying disk, tab, or label.

Subd. 15. Cremation procedures; container of insufficient capacity. If a cremated remains container is of insufficient capacity to accommodate all cremated remains of a given dead human body, subject to directives provided in the written authorization to cremate, the crematory shall place the excess cremated remains in a secondary cremated remains container and attach the second container, in a manner so as not to be easily detached through incidental contact, to the primary cremated remains container. The secondary container shall contain a duplicate of the identification disk, tab, or label that was placed in the primary container and all paperwork regarding the given body shall include a notation that the cremated remains were placed in two containers.

Subd. 16. Disposition procedures; commingling of cremated remains prohibited. No cremated remains shall be disposed of or scattered in a manner or in a location where the cremated remains are commingled with those of another person without the express written permission of the person with the legal right to control disposition or as otherwise provided by law. This subdivision does not apply to the burial of cremated remains at sea from individual containers, to the scattering or burial of cremated remains in a dedicated cemetery, to the disposal in a dedicated cemetery of accumulated residue removed from a cremation chamber or other cremation equipment, to the inurnment of members of the same family in a common container designed for the cremated remains of more than one body, or to the inurnment in a container or interment in a space that has been previously designated, at the time of sale or purchase, as being intended for the inurnment or interment of the cremated remains of more than one person.

Subd. 17. Cremation procedures; disposition of accumulated residue. Every crematory shall provide for the removal and disposition in a dedicated cemetery of any accumulated residue from any cremation chamber, mechanical processor, container, or other equipment used in cremation. Disposition of accumulated residue shall be in accord with the regulations of the dedicated cemetery and any applicable local ordinances.

Subd. 18. Cremation procedures; release of cremated remains. Following completion of the cremation, the inurned cremated remains shall be released according to the instructions given on the written authorization to cremate. If the cremated remains are to be shipped, they must be securely packaged and transported by a method which has an internal tracing system available and which provides for a receipt signed by the person accepting delivery. Where there is a dispute over release or disposition of the cremated remains, a crematory may deposit the cremated remains with a court of competent jurisdiction pending resolution of the dispute or retain the cremated remains until the person with the legal right to control disposition presents satisfactory indication that the dispute is resolved.

Subd. 19. Unclaimed cremated remains. If, after 30 calendar days following the inurnment, the cremated remains are not claimed or disposed of according to the written authorization to cremate, the crematory or funeral establishment shall give written notice, by certified mail, to the person with the legal right to control the final disposition or a legal designee, that the cremated remains are unclaimed and requesting further release directions. Should the cremated remains be unclaimed 120 calendar days following the mailing of the written notification, the crematory or funeral establishment may dispose of the cremated remains in any lawful manner deemed appropriate.

Subd. 20. Required records. Every crematory shall create and maintain on its premises or other business location in Minnesota an accurate record of every cremation provided. The record shall include all of the following information for each cremation:

- (1) the name of the person or funeral establishment delivering the body for cremation;
- (2) the name of the deceased and the identification number assigned to the body;
- (3) the date of acceptance of delivery;
- (4) the names of the cremation chamber and mechanical processor operator;
- (5) the time and date that the body was placed in and removed from the cremation chamber;
- (6) the time and date that processing and inurnment of the cremated remains was completed;
- (7) the time, date, and manner of release of the cremated remains;
- (8) the name and address of the person who signed the authorization to cremate; and
- (9) all supporting documentation, including any transit or disposition permits, a photocopy of the death certificate, and the authorization to cremate.

Subd. 21. **Retention of records.** Records required under subdivision 20 shall be maintained for a period of three calendar years after the release of the cremated remains. Following this period and subject to any other laws requiring retention of records, the crematory may then place the records in storage or reduce them to microfilm, microfiche, laser disc, or any other method that can produce an accurate reproduction of the original record, for retention for a period of ten calendar years from the date of release of the cremated remains. At the end of this period and subject to any other laws requiring retention of records, the crematory may destroy the records by shredding, incineration, or any other manner that protects the privacy of the individuals identified.

History: 1997 c 215 s 41

149A.96 DISINTERMENT AND REINTERMENT.

Subdivision 1. **Written authorization.** Except as provided in this section, no dead human body or human remains shall be disinterred and reinterred without the written authorization of the person or persons legally entitled to control the body or remains and a disinterment-transit-reinterment permit properly issued by the local registrar or subregistrar. Permits shall contain the information required on the permit form as furnished by the commissioner and shall be signed by the local registrar or subregistrar and the person in legal custody of the body, and, where appropriate, the mortician, intern, or practicum student who embalmed the body, the person in charge of the conveyance in which the body will be moved, or the person in charge of the place of final disposition. Where a funeral establishment name is used in signing a permit, it must be supported by the personal signature of a licensee employed by the funeral establishment.

Subd. 2. **Interment defined.** For purposes of this section, "interment" means final disposition by burial or entombment. Bodies held in a receiving vault for nonwinter burials pursuant to a directive from the person or persons with legal right to control final disposition and section 306.99 shall not be considered interred for purposes of this section.

Subd. 3. **Exception; movement within a dedicated cemetery.** The authorities in charge of a cemetery may disinter and reinter a body or remains within the same dedicated cemetery upon receipt of the written and notarized authorization of the person or persons with the right to control the disposition as described in section 149A.80.

Subd. 4. **Disinterment procedure; removal from dedicated cemetery.** No dead human body or human remains shall be disinterred and removed from a dedicated cemetery for reinterment elsewhere without a written and notarized authorization from the person or persons with the legal right to control the disposition and a disinterment-transit-reinterment permit issued by the local registrar or subregistrar. The person or persons requesting the disinterment and reinterment must obtain a copy of the death certificate showing the manner and location of final disposition. The copy of the death certificate along with written and notarized authorization to disinter and reinter obtained from the person or persons with legal right to control the body as expressed in section 149A.80, and a written and notarized statement of the reasons for requesting disinterment, the manner in which the body or remains will be disinterred and transported, the location of reinterment, and whether there are any known parties who oppose the disinterment shall be submitted to the registrar or a subregis-

trar in the registration district or county where the body or remains are interred. If the request for disinterment is unopposed, the registrar or subregistrar shall issue a disinterment–transit–reinterment permit. If the disinterment is opposed, no permit shall issue until the registrar or subregistrar receives a certified copy of a court order showing reasonable cause to disinter.

Subd. 5. Reasonable cause to disinter; factors to be considered. A presumption against removal operates against anyone who seeks to have a body or remains disinterred. To overcome the presumption, the party requesting disinterment must show reasonable cause for disinterment. A district court in the district where the body or remains are interred shall consider the following factors when deciding whether reasonable cause for disinterment exists:

- (1) the degree of relationship that the party seeking disinterment bears to the body or remains;
 - (2) the degree of relationship that the party seeking to prevent disinterment bears to the body or remains;
 - (3) if applicable, the expressed wishes of the decedent;
 - (4) the conduct of the party requesting disinterment, especially as it may relate to the circumstances of the original interment;
 - (5) the conduct of the party opposing disinterment, especially as it may relate to the circumstances of the original interment;
 - (6) the length of time that has elapsed since the original interment;
 - (7) the strength of the reasons offered both in favor of and in opposition to disinterment;
- and
- (8) the integrity and capacity of the party seeking disinterment to provide a secure and comparable resting place for the body or remains.

Subd. 6. Transportation of disinterred bodies. All disinterred bodies or remains removed from a dedicated cemetery shall be transported in an appropriate container and manner.

Subd. 7. Filing of documentation of disinterment and reinterment. The cemetery where the body or remains were originally interred shall retain a copy of the disinterment–transit–reinterment permit, the authorization to disinter, the death certificate, and, if applicable, the court order showing reasonable cause to disinter. Until the body or remains are reinterred the original permit and other documentation shall be in the possession of the person in physical or legal custody of the body or remains, or attached to the transportation container which holds the body or remains. At the time of reinterment, the permit and other documentation shall be filed according to the laws, rules, or regulations of the state or country where reinterment occurs. Where the body or remains are to be removed from a dedicated cemetery for reinterment elsewhere, the authority issuing the disinterment–transit–reinterment permit shall forward a photocopy of the issued permit to the commissioner to be filed with the original death certificate.

Subd. 8. Opening of disinterred caskets or alternative containers. The opening of any disinterred casket or alternative container is prohibited except when so ordered by a court of competent jurisdiction.

Subd. 9. Cremated remains. Subject to section 149A.95, subdivision 16, inurnment of the cremated remains and release to an appropriate party is considered final disposition and no further permits or authorizations are required for disinterment, transportation, or placement of the cremated remains.

Subd. 10. Penalty for noncompliance. In addition to any disciplinary action or measures taken by the commissioner pursuant to this chapter, any person violating this section may be guilty of a felony pursuant to section 307.08, subdivision 2.

History: 1997 c 215 s 42

149A.97 PRENEED ARRANGEMENTS.

Subdivision 1. Purpose and intent. It is the intent of the legislature that this section be construed as a limitation upon the manner in which a funeral provider is permitted to accept funds in prepayment of funeral services to be performed in the future or in prepayment of

funeral or burial goods to be used in connection with the final disposition of human remains. It is further intended to allow members of the public to arrange and pay for funerals, funeral services, funeral or burial goods, or final dispositions for themselves and their families in advance of need while at the same time providing all possible safeguards so that the prepaid funds cannot be dissipated, whether intentionally or not, so as to be available for the payment of the services and goods selected.

Subd. 2. Scope and requirements. This section shall not apply to any funeral goods purchased and delivered, either at purchase or within a commercially reasonable amount of time thereafter. When prior to the death of any person, that person or another, on behalf of that person, enters into any transaction, makes a contract, or any series or combination of transactions or contracts with a funeral provider lawfully doing business in Minnesota, other than an insurance company licensed to do business in Minnesota selling approved insurance or annuity products, by the terms of which, goods or services related to the final disposition of that person will be furnished at-need, then the total of all money paid by the terms of the transaction, contract, or series or combination of transactions or contracts shall be held in trust for the purpose for which it has been paid. The person for whose benefit the money was paid shall be known as the beneficiary, the person or persons who paid the money shall be known as the purchaser, and the funeral provider shall be known as the depositor.

Subd. 3. Nature of trust. Except as provided in this section, nothing in this section shall abate the rights, duties, and powers granted under chapters 501B and 520. A trust created for the holding of preneed arrangement funds shall be revocable, in its entirety, unless specifically limited by the person purchasing the preneed funeral goods and/or services. If the purchaser chooses to limit the revocability of the trust funds, the limitation must be declared in the trust instrument and must be limited to an amount equivalent to the allowable supplemental security income asset exclusion used for determining eligibility for public assistance at the time the trust is created.

Subd. 4. Freedom of choice; designation of trustee. The purchaser, regardless of whether the funds held in trust are designated revocable or irrevocable, retains the right to designate the trustee. At any time prior to the death of the beneficiary, the purchaser may designate a different trustee. Upon the death of the beneficiary, subject to section 149A.80, the rights of the purchaser vest in the individual with the legal right to control the disposition of the remains of the beneficiary. The depositor as trustee shall not have the right or power to designate another trustee prior to the death of the beneficiary or subsequent to such death.

Subd. 5. Deposit of trust funds and disclosures. Within 15 calendar days after receipt of any money required to be held in trust, all of the money must be deposited in a banking institution, savings or building and loan association, or credit union, organized under state or federal laws, the accounts of which are insured by an instrumentality of the federal government. The money must be carried in a separate account with the name of the depositor and the purchaser as trustees for the beneficiary. The depositor as trustee shall not have power to distribute funds, either principal or interest, from the account until the death of the beneficiary, subject to section 149A.80. For purposes of this section, distribute does not mean transferring the trust funds to different investment accounts within an institution or between institutions provided that the depositor as trustee does not have sole access to the funds in a negotiable form. This section shall be construed to limit the depositor's access to trust funds, in a negotiable form, prior to the death of a beneficiary. The preneed arrangements trust shall be considered an asset of the purchaser until the death of the beneficiary, whereupon the money shall be considered an asset of the estate of the beneficiary, to the extent that the value of the trust exceeds the actual value for the goods and services provided at-need. The location of the trust account, including the name and address of the institution in which the money is being held and any identifying account numbers, must be disclosed in writing to the beneficiary by the depositor as trustee at the time the money is deposited and when there are any subsequent changes to the location of the trust account.

Subd. 6. Disbursement of trust funds. The funds held in trust, including principal and accrued interest, may be distributed prior to the death of the beneficiary upon demand by the purchaser to the extent that the trust is designated revocable. At the death of the beneficiary and with satisfactory proof of death provided to the institution holding the trust funds, the funds, including principal and accrued interest, may be distributed by either the depositor as

trustee or the purchaser as trustee, subject to section 149A.80. The funds shall be distributed in their entirety, with no fees to be retained by the trustees as administrative fees. The funds shall be distributed for the payment of the actual at-need value of the funeral goods and/or services selected with any excess funds distributed to the estate of the decedent.

Subd. 7. Reports to commissioner. Every funeral provider lawfully doing business in Minnesota that accepts funds under subdivision 2 must make a complete annual report to the commissioner. The reports may be on forms provided by the commissioner or substantially similar forms containing, at least, identification and the state of each trust account, including all transactions involving principal and accrued interest, and must be filed by March 31 of the calendar year following the reporting year along with a filing fee of \$15 for each report. Fees shall be paid to the treasurer, state of Minnesota, for deposit in the state government special revenue fund in the state treasury. Reports must be signed by an authorized representative of the funeral provider and notarized under oath. All reports to the commissioner shall be reviewed for account inaccuracies or possible violations of this section. If the commissioner has a reasonable belief to suspect that there are account irregularities or possible violations of this section, the commissioner shall report that belief, in a timely manner, to the state auditor. The commissioner shall also file an annual letter with the state auditor disclosing whether or not any irregularities or possible violations were detected in review of the annual trust fund reports filed by the funeral providers. This letter shall be filed with the state auditor by May 31 of the calendar year following the reporting year.

Subd. 8. Investigations by state auditor. Upon notification from the county auditor or the commissioner of health of indications of violations of this chapter, or upon reliable written verification by any person, the state auditor shall make an independent determination of whether a violation of the provisions in this chapter is occurring or is about to occur. If the state auditor finds such evidence, the state auditor shall conduct any examinations of accounts and records of the entity that the state auditor considers the public interest to demand and shall inform the appropriate agency of any finding of misconduct. The state auditor may require the entity being examined to send all books, accounts, and vouchers pertaining to the receipt, disbursement, and custody of funds to the office of the state auditor for examination. The person, firm, partnership, association, or corporation examined under this section by the state auditor shall reimburse the state auditor for expenses incurred in conducting the examination within 30 days after the state auditor submits its expenses. Interest at the rate established in section 549.09 shall accrue on the outstanding balance starting on the 31st day after the state auditor's office submits its request for expenses.

Subd. 9. Required records. Every funeral provider lawfully doing business in Minnesota that accepts funds under subdivision 2 must create and maintain on its premises or other business location in Minnesota an accurate record of every trust fund established with the funeral provider as trustee. The record must contain the following information.

- (1) the names of the purchaser, beneficiary, and depositor;
- (2) the date, location, identifying account numbers, and amount of the funds originally deposited;
- (3) any subsequent changes to the location of the account, identifying account number, or trustee designation;
- (4) the date, amount, and payee of any distributions from the account; and
- (5) all supporting documentation, including a copy of the original trust agreement, copies of any contracts for the purchase of preneed funeral goods and services, and any other appropriate documentation.

Subd. 10. Retention of records. Records required under subdivision 9 shall be maintained for a period of three calendar years after the release of the trust funds. Following this period and subject to any other laws requiring retention of records, the funeral provider may then place the records in storage or reduce them to microfilm, microfiche, laser disc, or any other method that can produce an accurate reproduction of the original record, for retention for a period of ten calendar years from the date of release of the trust funds. At the end of this period and subject to any other laws requiring retention of records, the funeral provider may destroy the records by shredding, incineration, or any other manner that protects the privacy of the individuals identified.

MINNESOTA STATUTES 1998

1299

MORTUARY SCIENCE; DISPOSITION OF DEAD BODIES 149A.97

Subd. 11. **Report data.** Data on individuals collected and maintained under subdivision 7 are private data on individuals as defined in section 13.02, subdivision 12. Section 13.10 applies to data on decedents collected under subdivision 7.

Subd. 12. **Penalties.** Any violation of this section is grounds for disciplinary action pursuant to sections 149A.04 to 149A.10.

History: 1997 c 215 s 43