

# FOR DISCUSSION

## DRAFT STATUTE AND RULE CHANGES

October 2010

The Statutes and Rules that are under consideration for change are included in this document, they are capitalized and in bold print. The sections or words with a line through them would be eliminated. These suggested changes are not the final version; they are for discussion purposes and to get your comments. If you have suggestions or comments, please email or write to the Board office.

[www.rachael.mcgregor@arkansas.gov](mailto:www.rachael.mcgregor@arkansas.gov) , 101 East Capitol, Suite 113, Little Rock, AR 72201

The changes to the Statutes will need to be presented to the legislature this next session and the changes to the rules will be addressed by the Rules Committee at a later date. Before the Rule changes are formally introduced, they will be posted on the web site and a public meeting will be held. The time and place of the meeting will be posted on the web site as well.

## STATUTES

### **17-29-207. Rules and regulations.**

(a) The Board of Embalmers and Funeral Directors is empowered to promulgate appropriate rules and regulations for the transaction of its business and for the betterment and promotion of the standards of service and practice to be followed in the practice of embalming and funeral directing in the State of Arkansas as it may deem expedient and consistent with the laws of this state and for the public good.

(b) The board is expressly authorized and empowered to promulgate rules and regulations reasonably necessary to reflect any changes in the law as adopted by the United States Congress or any appropriate agency of the Government of the United States as it affects funeral establishments, funeral directors, or embalmers and for the purpose of keeping this law consistent with, and compatible to, the laws of the United States.

(c) The board is authorized and empowered to determine the qualifications necessary to practice the science of embalming or the business of funeral directing, or both, and shall adopt bylaws, rules, and regulations in connection with the care and disposition of dead human bodies

in this state. The board shall enforce compliance with the laws, rules, and regulations by those engaged in the science of embalming and business of funeral directing in this state and may transact any other business necessary for carrying out the provisions of this subchapter and subchapter 3 of this chapter.

(d)(1) The board may promulgate reasonable regulations for the licensing of crematoriums.

(2)(A) Beginning January 1, 1990, no crematorium may be operated in this state unless licensed by the board, and no person shall be cremated in this state except at a licensed crematorium.

(B) Violations of this subsection are ~~Class A misdemeanors~~. **CLASS D FELONIES.**

(e)(1) In the interest of public health and to ensure the safe, secure, and timely transportation of dead human bodies in and through Arkansas, the board is authorized to license, inspect, and promulgate reasonable regulations for any person, partnership, corporation, association, society, or other legal entity engaged in the business of transporting dead human bodies over the public streets and highways of this state.

(2) Violations of regulations promulgated under this subsection are ~~Class A misdemeanors~~ **CLASS D FELONIES.**

#### **17-29-306. Renewal.**

(a) Every license holder under the provisions of this subchapter who wishes to continue the practice of the science of embalming or the business of funeral directing, or both, shall pay to the secretary-treasurer of the board on or before **DECEMBER 31** ~~January 31~~ of each year a renewal fee. Certificates not renewed by **DECEMBER 31** ~~January 31~~ of any year shall be considered delinquent. Any person in arrears more than three (3) years shall ~~make application to the board and~~ appear before the board at a regular meeting **AND PAY DELINQUENT FEES** to be eligible for renewal of license.

(b) Renewal of all funeral establishment licenses shall be made on or before **DECEMBER 31** ~~January 31~~ of each year and shall be accompanied by the annual renewal fee prescribed in § 17-29-208. Licenses not renewed by **DECEMBER 31** ~~January 31~~ of any year shall be considered delinquent and constitute grounds for disciplinary action by the board.

(c) Failure to receive the renewal notice shall not relieve the licensee or establishment of the duty to pay the renewal fee as prescribed.

#### **17-29-311. Violations - Prohibitions.**

(a) The State Board of Embalmers and Funeral Directors may issue letters of reprimand or caution, refuse to issue a license, suspend or revoke any license for the practice of embalming or funeral directing

or may place the holder thereof on a term of probation after proper hearing upon finding the holder of the license to be guilty of acts of commission or omission, including the following:

- (1) Conviction of a felony;
  - (2) Misrepresentations made or fraud committed as a holder of a license;
  - (3) False or misleading advertising;
  - (4) Solicitation of dead human bodies by the licensee, his agents, assistants, or employees, whether such solicitation occurs after death or while death is impending, providing that this prohibition shall not be deemed to prohibit general advertising;
  - (5) Employment directly or indirectly of an apprentice, agent, assistant, employee, or other person, on a part-time or full-time basis or on a commission for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment;
  - (6) The direct or indirect payment or offer of payment of a commission by the licensee, his agents, assistants, or employees for the purpose of securing business;
  - (7) Allowing personnel unlicensed pursuant to this subchapter to execute contracts for funeral service;
  - (8) Aiding or abetting an unlicensed person to practice embalming or funeral directing;
  - (9) Violation of any provision of this subchapter and subchapter 2 of this chapter;
  - (10) Violation of any state law or municipal or county ordinance or regulation affecting the handling, custody, care, transportation, or final disposition of dead human bodies;
  - (11) Fraud or misrepresentation in obtaining or renewing a license;
  - (12) **PROVIDED ALL LAWS, RULES & REGULATIONS HAVE BEEN BEEN FOLLOWED**, refusing to properly release a dead human body to the custody of the person or entity having the legal right to effect such release.
  - (13) Willful failure to secure a permit for the removal or burial or other disposition of a dead human body;
  - (14) Knowingly making a false statement on a certificate of death;
  - (15) Violations of applicable law or regulation with regard to prearranged or prepaid funeral services or funeral merchandise. However, the proper regulatory agency for prearranged or prepaid funeral services or funeral merchandise shall have determined that such a violation has occurred; or
  - (16) Discriminating in services because of race, creed, color, or national origin;
  - (17) Failure to meet continuing education requirements; or
  - (18) Failure to answer a complaint within the 15 day time period.
- (b) No violation of subdivisions (4), (5), (6), or (7) of subsection (a) shall be deemed to have occurred when in the ordinary course of business a routine sale of a prearranged or a prefinanced funeral or of funeral merchandise shall have been made.
- (c) No person licensed pursuant to this subchapter shall remove or embalm a dead human body when he or she has information indicating crime or violence of any sort in connection with the cause of death

until permission of the coroner or medical examiner, or some other fully qualified person acting in such capacity if there is no coroner or medical examiner, has first been obtained.

(d) No public officer or employee, or the official of any public institution, or any physician or surgeon, or any other person having a professional relationship with any decedent shall send or cause to be sent to a funeral establishment or to any person licensed pursuant to this subchapter the remains of any deceased person without having first made due inquiry as to the desires of ~~the next of~~ **THE AUTHORIZING AGENT(S)** ~~kin and of the persons who may be chargeable with the funeral and expenses of the decedent. If any such kin is found, his or her authority and directions shall govern except in those instances where the deceased made his or her arrangements.~~

(e) It shall be unlawful for any person, partnership, corporation, or association who has not been licensed or registered as specified in this subchapter to transact, practice, or hold himself or itself out as transacting or practicing embalming or funeral directing, or operating or maintaining a funeral establishment within this state.

(f) All dead human bodies not buried or otherwise disposed of within twenty-four (24) hours after death shall be embalmed as prescribed in this subchapter or subchapter 2 of this chapter or stored under refrigeration as determined by the State Board of Health.

(g) It shall be unlawful and a violation of this subchapter and subchapter 2 of this chapter to transport or otherwise transfer by common carrier any dead human body out of the State of Arkansas unless the body has been prepared and embalmed by a licensed embalmer of this state and a transit-burial permit has been issued by the local registrar of the county where death occurred. Any licensee of this state permitting this to be done shall be subject to the punishment spelled out in this subchapter and subchapter 2 of this chapter.

(h) It shall be unlawful and a violation of this chapter for any person to engage in the practice of embalming or funeral directing or to hold himself out to the public as a practicing embalmer or funeral director within the State of Arkansas without being the holder of a license.

#### **17-29-401. Criminal penalties.**

Any person who, after February 28, 1985, practices the science of embalming, engages in the business of funeral directing, or conducts, maintains, manages, or operates a funeral establishment without a license issued under any provision of subchapters 2 and 3 of this chapter shall be guilty of a ~~Class A misdemeanor~~ **CLASS D FELONY** and subject to the punishment prescribed for ~~Class A misdemeanors~~ **CLASS D FELONIES** in the Arkansas Criminal Code as now or hereafter amended.

# RULES

**24 FINAL DISPOSITION.** ~~The final placement of the body whether it is by earth interment, above ground interment, cremation, burial at sea, or by delivery to a medical institution for lawful dissection and experimentation.~~ **FINAL DISPOSITION IS DEFINED AS EARTH INTERMENT, ABOVE GROUND ENTOMBMENT, DELIVERY DIRECTLY , OR THROUGH A LICENSED TRANSPORTATION SERVICE TO A CREMATORY FOR A CREMATION, DELIVERY DIRECTLY , OR THROUGH A LICENSED TRANSPORTATION SERVICE TO THE PROPER AGENCY FOR BURIAL AT SEA, OR DELIVERY DERECTLY, OR THROUGH A LICENSED TRANSPORTATION SERVICE TO A MEDICAL INSTITUTION FOR LAWFUL DISSECTION AND EXPERIMENTATION.**

## **RULE II LICENSEE IN CHARGE OF FUNERAL DIRECTING AND EMBALMING**

1. Every funeral conducted within the State of Arkansas must be under the ~~personal~~ supervision and direction and in charge of a funeral director who holds a valid license from this Board. To conduct a funeral shall require ~~the direct personal~~ supervision of a licensed funeral director until final disposition is completed. **IN THE CASE OF EARTH INTERMENT AND ABOVE GROUND ENTOMBMENT, THE LICENSEE SHALL BE ONSITE SUPERVISING ALL MATTERS UNTIL COMPLETION OF THE EARTH INTERMENT OR ABOVE GROUND ENTOMBMENT EXCEPT WHEN THE AUTHORIZING AGENT HAS CONTRACTED WITH THE CEMETERY, EITHER PRIVATE, COMMERCIAL OR GOVERNMENTAL, TO CARRY OUT THESE PROCEDURES. IN THOSE CASES, THE LICENSEE SHALL BE ON SITE SUPERVISING ALL MATTERS UNTIL THE CONCLUSION OF THE FUNERAL SERVICE ONLY.**

(1) Renewal of all funeral establishment licenses Type A must be made on or before ~~January 31<sup>st</sup>~~ **DECEMBER 31** of each year and must be accompanied by the annual renewal fee of one hundred and fifty (\$150.00) dollars.

(2) Licenses not renewed by ~~January 31<sup>st</sup>~~ **DECEMBER 31** of any year shall be considered delinquent and may be grounds for disciplinary action by the Board.

(2) Licenses not renewed by ~~January 31<sup>st</sup>~~ **DECEMBER 31** of any year shall be considered delinquent and may be grounds for disciplinary action by the Board.

8. All crematory licenses ~~issued by the Board shall expire on December 31<sup>st</sup> of each year, and~~ must be renewed on or before ~~January 31<sup>st</sup>~~ **DECEMBER 31<sup>ST</sup>** of each year ~~following the date of expiration.~~ Renewal license fees, as established by the Board, must accompany each original and renewal application.

9. All renewals received after ~~January 31<sup>st</sup>~~ **DECEMBER 31<sup>ST</sup>** of each year are considered delinquent. The Board may impose delinquent fees and/or order a crematory authority that is delinquent in its renewal to cease operation until a renewal card has been issued by the Board.

E. Transport service firm licenses and renewal licenses shall be issued under this section upon application, receipt of proof of required insurance, and after approval of the Board. **ALL TRANSPORT LICENSES MUST BE RENEWED ON OR BEFORE DECEMBER 31<sup>ST</sup>** ~~Licenses expire on December 31<sup>st</sup> of each year, and must be renewed by January 31<sup>st</sup>.~~

1. An application fee shall accompany each application for licensure or renewal.

2. Renewal of all transport service firm licenses must be made on or before January 31<sup>st</sup> of each year and must be accompanied by the annual renewal fee.

3. Licenses not renewed by **DECEMBER 31<sup>ST</sup>** ~~January 31<sup>st</sup>~~ of any year shall be considered delinquent and may be grounds for disciplinary action by the Board.

#### **RULE IX LICENSE RENEWALS AND REINSTATEMENTS**

1. (a) All embalmer and funeral director licenses issued by this Board shall expire on December 31<sup>st</sup> of each year, and must be renewed on or before **DECEMBER 31<sup>ST</sup>** ~~January 31<sup>st</sup> following the date of expiration.~~

(b) All establishment licenses expire on December 31<sup>st</sup> of each year, and must be renewed on or before **DECEMBER 31<sup>ST</sup>** ~~January 31<sup>st</sup> following the date of expiration.~~

(c) Renewal fees, as provide for, must accompany each application for renewal.

(d) Every licensed embalmer and/or funeral director who is actively engaged in the practice of embalming and/or funeral directing in Arkansas shall report 8 hours of approved continuing education on the renewal form.

(e) Failure to receive the renewal notice shall not relieve the licensee or establishment of the duty to pay the renewal fee as prescribed.

2. All renewals received after **DECEMBER 31<sup>ST</sup>** ~~January 31<sup>st</sup>~~ of each year are considered delinquent, and certificate holders are not allowed to practice the science of embalming or the business

of funeral directing, until a renewal card has been issued for the current year. A delinquent fee of fifty (\$50.00) dollars for each three (3) months, or fraction thereof, with a maximum of two (2) years, must be remitted with a renewal fee of two (2) years, which will include the year renewed. Any person in arrears more than three (3) years must appear before the Board at a regular meeting.

#### **RULE XIV FUNERAL SERVICE PRACTICES**

1. Authorization shall be obtained from the authorizing agent who will be responsible for the post death arrangements before removal of any body from the place of death, provided, however, that removal may be made without authorization where human dignity or the avoidance of a public nuisance requires. Such removal without authorization shall be made only pending required authorization from the authorizing agent when it can be obtained. If the funeral firm **WHICH HAS CUSTODY OF THE REMAINS**, to whose establishment the body was removed, is not the one subsequently selected to provide the immediate post death activities **FUNERAL SERVICES**, such firm shall release the body to the **FUNERAL HOME SELECTED BY THE AUTHORIZING AGENT(S). THE RECEIVING FUNERAL HOME SHALL BE RESPONSIBLE FOR THE COSTS OF SERVICES PROVIDED BY THE INITIAL FUNERAL HOME. THE COST OF THE PROVIDED SERVICES SHALL NOT EXCEED THE PRICES FOR THOSE SERVICES AS LISTED ON THE INITIAL FUNERAL HOMES GENERAL PRICE LIST. PAYMENT OF THOSE COSTS SHALL BE PAYABLE AT THE TIME OF REMOVAL.** firm or individual selected by the authorizing agent; provided however, that. If the initial removal was at the request of a public official or the authorizing agent who later decided to employ another firm, costs incurred in the removal, shelter and temporary care of the body shall be paid by such public officials or the authorizing agent. However, such payment shall not be a prerequisite to release of the body.