

CHAPTER 149

EMBALMERS

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149.01 EMBALMING, FUNERAL DIRECTING; DEFINITIONS.

No person shall embalm any dead human body or practice embalming, or direct or supervise funerals, in the state of Minnesota, without being licensed by the state commissioner of health, except as hereinafter provided.

For the purposes of this chapter, the following definitions shall be adopted and understood to be included within the meaning of this chapter:

(1) Any person who shall embalm dead human bodies, or who shall take charge of the remains of those dead of any communicable disease, or prepare dead human bodies for shipment, or hold out to do any of the above acts by advertising or any other means, shall be defined as and construed to be practicing mortuary science;

(2) Any person who engages for compensation in the following practices: directing or supervising funerals, or the business or practice of preparing dead human bodies for burial by means other than embalming, or the disposition of dead human bodies, or the provision or maintenance of a place for the preparation for disposition or for the care or disposition of dead human bodies, or the use in connection with such business of the word or term "funeral director," "undertaker," "mortician," "mortuary service," "mortuary science," or any other word or term from which can be implied the business of funeral directing, or the holding out to the public that one is a funeral director or mortician, shall be defined as and construed to be practicing funeral directing or mortuary science; provided, however, that the word "person," as used herein, shall apply only to a natural person;

(3) A "funeral director" is any person who has secured a license to engage in the practice of funeral directing as hereinbefore set forth;

(4) Any person who shall be licensed to practice both embalming and funeral directing as hereinbefore set forth in definitions (1) and (2) shall be said to be practicing "mortuary science";

(5) A "mortician" is any person who has secured a license to engage in the practice of mortuary science;

(6) A "resident trainee in mortuary science" is any person engaged in the learning of the practice of mortuary science under a mortician duly licensed and registered under the provisions of this chapter; provided, that no person shall serve or attempt to serve as such trainee under any such mortician or funeral director until the person has filed a registration with the commissioner of health.

History: (5817) 1905 c 101 s 1; 1927 c 305 s 1; 1937 c 417 s 1; 1955 c 35 s 1; 1977 c 305 s 45; 1986 c 444

149.02 EXAMINATION; LICENSING.

The state commissioner of health is hereby authorized and empowered to examine, upon submission of an application therefor and fee as prescribed by the commissioner pursuant to section 144.122, all applicants for license to practice mortuary science or funeral directing and to determine whether or not the applicants possess the necessary

qualifications to practice mortuary science or funeral directing. If upon examination the commissioner shall determine that an applicant is properly qualified to practice mortuary science or funeral directing, the commissioner shall grant a license to the person to practice mortuary science or funeral directing. Licenses shall expire and be renewed as prescribed by the commissioner pursuant to section 144.122.

On or after the thirty-first day of December, 1955, separate licenses as embalmer or funeral director shall not be issued, except that a license as funeral director shall be issued to those apprentices who have been registered under rules of the commissioner as apprentice funeral directors on the first day of July, 1955, qualify by examination for licensure under such rules as funeral directors before the first day of August, 1957. Such applicants shall file an application for license as a funeral director in the manner as is required in section 149.03 for a license in mortuary science. It shall be accompanied by a fee in an amount prescribed by the commissioner pursuant to section 144.122. However, a single license as a funeral director shall be issued to those persons whose custom, rites, or religious beliefs forbid the practice of embalming. An applicant for a single license as a funeral director under this exception shall submit to the commissioner of health two affidavits substantiating the beliefs and convictions of the applicant and shall meet any other standards for licensure as are required by law or by rule of the commissioner. Such a funeral director shall only direct funerals for persons of the same customs, rites or religious beliefs as those of the funeral director. In the case of a funeral conducted for persons of such customs, rites or religious beliefs where embalming and funeral directing is necessary according to law, such embalming and funeral directing shall be performed only by a person licensed to do so in this state.

All licensees who on the thirty-first day of December, 1955, hold licenses as embalmers only shall be granted licenses to practice mortuary science and may renew their licenses at the times and in the manner specified by the commissioner pursuant to section 144.122.

All licensees who on the thirty-first day of December, 1955, hold licenses as funeral director only may continue to renew their licenses at the times and in the manner specified by the commissioner pursuant to section 144.122. If a licensee fails to renew, as in this chapter required, that person's license as a funeral director shall not thereafter be reinstated.

To assist in the holding of the examination and enforcement of the provisions of this chapter, the commissioner shall establish a mortuary sciences advisory council and shall appoint four members to it. Two members shall be licensed in mortuary science and shall have had at least five years experience immediately preceding their appointment in the preparation and disposition of dead human bodies and in the practice of mortuary science. A third member shall be a representative of the commissioner, and the fourth member shall be a full-time academic staff member of the course in mortuary science of the University of Minnesota. The terms, compensation and removal of members and expiration of the council shall be as provided in section 15.059.

History: (5818) 1905 c 101 s 2; 1927 c 305 s 2; 1937 c 417 s 2; 1955 c 35 s 2; 1959 c 395 s 1; 1974 c 471 s 8; 1975 c 310 s 12; 1976 c 149 s 31; 1977 c 305 s 45; 1983 c 260 s 37; 1985 c 248 s 70; 1986 c 444

149.03 APPLICANTS, QUALIFICATIONS; LICENSEES FROM OTHER STATES; APPRENTICES AND TRAINEES.

Subdivision 1. The applicant for an examination for license in mortuary science shall make application therefor in writing verified on a form prescribed as to details and furnished by the state commissioner of health. Each application shall be accompanied by a fee in an amount prescribed by the commissioner pursuant to section 144.122 and be supported by affidavits from at least two reputable residents of the county in which the applicant resides or proposes to carry on the practice of mortuary science certifying that the applicant is of good moral character. No person shall be granted a license in mortuary science unless that person shall be at least 18 years of age and of good moral character and temperate habits. Before the study of embalming or funeral directing in

mortuary science was commenced, the applicant shall have satisfactorily completed at least two scholastic years at an accredited college or university in any subjects the commissioner may prescribe by rule as suitable and desirable preparation for the study of mortuary science. The applicant for license in mortuary science, after having secured a certificate of graduation from the course in mortuary science conducted by the University of Minnesota or from a school or college of mortuary science duly accredited, shall serve at least one year of apprenticeship experience in mortuary science. Previous registered apprenticeship experience in Minnesota may be accepted by the commissioner for a period not exceeding three months in partial fulfillment of this apprenticeship requirement. The applicant shall have sufficient knowledge, experience, and training as the commissioner may determine to properly qualify for a license in mortuary science.

On successfully completing the examination and requirements for an original license, the applicant shall submit to the commissioner a license application and a fee in an amount prescribed by the commissioner pursuant to section 144.122, upon receipt of which the commissioner may issue a license. The license shall expire and be renewed as prescribed by the commissioner pursuant to section 144.122.

Subd. 2. Any holder of a license issued by state authority in any other state maintaining a system and standard of examination for license to engage in the business or practice of mortuary science, which, in the judgment of the commissioner, shall be substantially the equivalent to that required in this state for the issuance of a license therefor, may obtain a license from the commissioner without examination in the discretion of the commissioner upon payment of an application fee in an amount prescribed by the commissioner pursuant to section 144.122 and upon proof of good moral character, temperate habits, and practical experience. The license shall expire and be renewed as prescribed by the state commissioner of health pursuant to section 144.122.

A licensee of any bordering state or province, the proximity of whose establishment makes possible the provision of service to Minnesota, may upon application be granted a mortuary science courtesy card at the discretion of the commissioner. An application shall be made upon forms provided by the commissioner, shall contain proof of good moral character, temperate habits, and practice, and shall bear the endorsement of the applicant's licensing authority. A fee in an amount prescribed by the commissioner pursuant to section 144.122 shall accompany the application. The mortuary science courtesy card will permit the licensee to exercise the privileges granted by the license in mortuary science except that the licensee may not operate a funeral establishment in Minnesota. The courtesy card shall expire and be renewed as prescribed by the commissioner pursuant to section 144.122. The commissioner may cancel a mortuary science courtesy card for abuse of the privileges it confers.

Subd. 3. Every apprentice and trainee shall register with the commissioner at such times and in such manner as may be provided by the commissioner and pay a registration fee in an amount prescribed by the commissioner pursuant to section 144.122. The commissioner shall keep a separate register of such trainees and apprentices, stating their names, ages, residences, where they attended school, the morticians with whom they were associated, and such other information as the commissioner may require.

Subd. 4. [Repealed, 1963 c 461 s 3]

History: (5819) 1905 c 101 s 3; 1927 c 305 s 3; 1937 c 417 s 3; 1955 c 35 s 3; 1959 c 654 s 1,2; 1973 c 725 s 19; 1974 c 471 s 9,10; 1975 c 310 s 13,14; 1977 c 305 s 45; 1985 c 248 s 70; 1986 c 444

149.04 RENEWAL OF LICENSE.

Any license may be renewed from time to time and shall be in force after such renewal for a period specified by the state commissioner of health upon the payment of a renewal fee in an amount prescribed by the commissioner pursuant to section 144.122.

All fees received under this chapter shall be paid by the state commissioner of health to the credit of the general fund in the state treasury. The salaries of the necessary employees of the commissioner, the per diem of the inspectors and examiners, their expenses, and all incidental expenses of the commissioner in carrying out the provisions of this chapter shall be paid from the appropriations made to the state commissioner of health, but no expense or claim shall be incurred or paid in excess of the amount received from the fees herein provided.

History: (5820) 1905 c 101 s 4; 1927 c 305 s 4; 1937 c 417 s 4; 1955 c 35 s 4; 1959 c 654 s 3; 1969 c 109 s 1; 1974 c 471 s 11; 1975 c 204 s 76; 1977 c 305 s 45

149.05 LICENSES; DENIAL, SUSPENSION, REVOCATION; CERTIORARI; RULES.

Subdivision 1. The state commissioner of health may refuse to grant, refuse to renew, or may suspend or revoke, a license of any applicant or licensee, for any of the following causes or acts:

- (1) The obtaining of, or attempt to obtain, a license by fraudulent representation;
- (2) Conviction of a crime involving moral turpitude;
- (3) Violation of the laws of this state relative to the burial or disposal of dead human bodies, or of the rules of the commissioner in relation to the care, custody, or disposition of dead human bodies, or the disinfecting of premises where contagion exists;
- (4) For incompetency or untrustworthiness in the practice of mortuary science or funeral directing or the excessive use of alcohol or unlawful use of narcotics;
- (5) For "unprofessional conduct," which means the use of false or misleading advertising, obtaining possession of or embalming a dead human body without first being directed or duly authorized to do so by a relative of the deceased person or a person entitled to custody thereof, or refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to the custody thereof;
- (6) Upon satisfactory proof that the licensee directly or indirectly has paid or caused to be paid any sum of money or other valuable consideration for the securing of business or for obtaining authority to dispose of any dead human body;
- (7) Upon satisfactory proof that a licensee has employed any person not registered or licensed under the provisions of this chapter to perform the duties of a mortician or funeral director.

Subd. 2. The state commissioner of health may, pursuant to chapter 14, adopt rules defining or interpreting the above grounds for refusing to grant, refusing to renew, or suspension or revocation of a license.

Subd. 3. **Review.** Any action of the commissioner in refusing to grant or renew a license or in suspending or revoking a license is subject to review in accordance with chapter 14.

Subd. 4. The commissioner shall make and enforce reasonable rules not inconsistent with the provisions of this chapter for the examination and licensing of morticians and funeral directors, and the registration, training and regulation of trainees, and the investigation and hearing for the refusal to renew, suspension or revocation of licenses, and in relation to the sanitary construction, equipment, operation and maintenance of mortuaries, funeral directing establishments, and other places used for the care or the preparation for the burial or disposal of dead human bodies, and for inspection thereof.

History: (5821) 1905 c 101 s 5; 1927 c 417 s 5; 1943 c 482 s 1; 1955 c 35 s 5; 1961 c 476 s 1; 1963 c 461 s 1; 1977 c 305 s 45; 1982 c 424 s 130; 1983 c 247 s 63; 1985 c 248 s 70

149.06 VIOLATIONS, PENALTIES.

Any person who shall embalm a dead human body, or who shall hold out as a

mortician, embalmer, funeral director, or trainee, without being licensed or registered, shall be guilty of a misdemeanor and punished accordingly. This chapter shall not apply to or in any way interfere with the duties of any officer of any public institution, or with the duties of any officer of a medical college, county medical society, anatomical association, accredited college of mortuary science, or to any person engaged in the performance of duties prescribed by law relating to the conditions under which the indigent dead human bodies are held subject to anatomical study, or to the custom or rites of any religious sect in the burial of their dead.

The name of a person registered as a trainee must not be used or caused or permitted to be used by the person, in any way, in the name, designation, or title, or in the advertising of the funeral establishment with which the person is associated or in which the person may have acquired a proprietary or financial interest.

Nothing in this chapter shall in any way affect the operation of corporations or burial associations, providing all work of embalming or funeral directing is done by licensed morticians or funeral directors, as provided by this chapter. It shall be unlawful for any such corporation or burial association to:

(1) Violate any of the laws of this state relative to the burial or disposal of dead human bodies, or any of the rules of the state commissioner of health in relation to the care, custody, or disposition of dead human bodies, or the disinfecting of premises where contagion exists;

(2) Publish or disseminate misleading advertising;

(3) Directly or indirectly pay or cause to be paid any sum of money or other valuable consideration for the securing of business, other than by advertising, or for obtaining authority to dispose of any dead human bodies;

(4) Permit unlicensed persons to render or perform any of the services required to be performed by persons licensed under the provisions of this chapter.

Any corporation or burial association violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor.

Nothing in this chapter shall be construed as repealing any of the laws of this state in regard to the organizing or incorporating of cooperative associations.

History: (5822) 1905 c 101 s 6; 1937 c 417 s 6; 1955 c 35 s 6; 1963 c 461 s 2; 1977 c 305 s 45; 1985 c 248 s 70; 1986 c 444

149.07 [Repealed, 1980 c 457 s 3]

149.08 FUNERAL ESTABLISHMENT PERMIT.

No person shall conduct, maintain, manage, or operate a funeral establishment unless a permit for each establishment has been issued by the state commissioner of health and is conspicuously displayed in the funeral establishment. Each permit shall be valid only for one specific location, and separate permits shall be required of two or more firms operating from the same funeral establishment.

"Funeral establishment" means every place or premise devoted to or used in the care and preparation for the funeral and burial of human dead, or as the office or place for carrying on the profession of funeral service, or for any combination of the foregoing purposes.

A permit to operate a funeral establishment shall be issued by the state commissioner of health upon application made on blanks furnished by the state commissioner of health and filed with the commissioner and payment of a fee in an amount prescribed by the commissioner pursuant to section 144.122. A permit shall expire and be renewed as prescribed by the commissioner pursuant to section 144.122.

Violation of any provision of Laws 1969, chapter 109 or any rules of the state commissioner of health committed by any person operating a funeral establishment or with the person's knowledge and consent by the person's officer, agent or employee, shall be considered sufficient cause for suspension or revocation of a funeral establishment permit.

History: 1969 c 109 s 2; 1974 c 471 s 12; 1975 c 310 s 15; 1977 c 305 s 45; 1985 c 248 s 70; 1986 c 444

149.09 STATEMENTS; PRICES; CREMATION WITHOUT CASKET.

Subdivision 1. **Itemized statement to be furnished.** Every person licensed or granted a permit pursuant to this chapter, including funeral directors and funeral establishments, shall furnish at the time funeral arrangements are made for the care and disposition of the body of a deceased person, an itemized statement in compliance with rules adopted by the commissioner of health pursuant to chapter 14. The rules shall require a separate listing of cost in the following categories: casket; burial vault; use of facilities for funeral services; use of facilities for reviewal; specifically itemized transportation costs; specifically itemized funeral service merchandise; embalming; preparation of the body; other professional services; and a statement of all anticipated cash advances and expenditures.

Subd. 2. **Requiring retail price of casket to be displayed.** Every funeral director or operator who offers a casket for sale shall display the retail price of the casket in a conspicuous place on the casket.

Subd. 3. **Authorizing cremation or calcination without a casket.** A person operating a crematory or calcinatory shall not require that human remains be placed in a casket before cremation or calcination or that human remains be cremated or calcinated in a casket or refuse to accept human remains for cremation or calcination for the reason that human remains are not in a casket. This subdivision does not prohibit the requiring of a container or disposal unit to protect the physical health or safety of any individual. The listing of costs statement required in subdivision 1 shall include the following statement for which a charge is made in conspicuously legible print: Minnesota law does not require that remains be placed in a casket before or at the time of cremation.

Subd. 4. **Penalty.** Any violation of subdivisions 1 to 3 shall constitute unprofessional conduct within the meaning of section 149.05, subdivision 1, clause (5).

History: 1973 c 442 s 1; 1977 c 305 s 45; 1982 c 424 s 130

149.11 PREARRANGED FUNERAL PLANS; CONTRACTS; TRUST FUNDS.

(a) When prior to the death of any person, that person or another enters into any transaction, makes a contract, or any series or combination of transactions or contracts with another person, partnership, association or corporation, other than an insurance company licensed to do business in the state of Minnesota, by the terms of which, certain personal property related to the funeral services or the burial, cremation, or other disposition of human remains will be used upon the death of the person for whom the property is to be used, or when the professional services of a funeral director or embalmer will then be furnished, or both, 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 until the death of the person for whose benefit the money was paid, or refunded to the person who made the payment or payments, upon demand. Accruals of interest or dividends declared upon the sum of money held in trust are subject to the same trust. The person, partnership, association or corporation holding the money in trust shall inform the person on whose behalf the money is held that all money paid plus all accrued earnings will be held in trust until the death of that person or until a request for a refund is made if made prior to death. 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, and any subsequent changes in that information must be disclosed in writing to the person on whose behalf the money is being held, at the time the funds are deposited into the trust account and at the time of any subsequent changes in the information. The personal property shall include but not be limited to a casket, burial vault not interred in a grave, combination casket-vault or other receptacle not described in paragraph (b) for the interment, entombment, cremation, or other disposition of human remains.

(b) Nothing in this section shall prevent the sale and delivery of cemetery lots, graves, burial vaults preinterred in a grave, cremation urns, crypt spaces, niches, or grave or lot markers or monuments before their use is required. Nothing in this section

prevents the preconstruction sale of crypt spaces to be permanently installed except that any seller of mausoleum space or columbarium space, selling burial space in a mausoleum or columbarium that is not completely constructed and usable, must comply with section 306.90.

(c) It is the intent of the legislature that the provisions of this section shall be construed as a limitation upon the manner in which a person or legal entity 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 funeral or final disposition of human remains. It is further intended to allow members of the public to arrange and pay for funerals, final dispositions, funeral services, and funeral and burial goods 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.

History: 1953 c 481 s 1; 1967 c 32 s 1; 1985 c 95 s 1; 1988 c 509 s 1

149.12 DEPOSIT OF TRUST FUNDS.

Within 15 days after its receipt, any person holding money in trust under section 149.11 shall deposit all of the money in a banking institution, savings, building and loan association, or credit union, organized under the laws of this state or of the United States of America, the accounts of which are insured by an instrumentality of the federal government. The money shall be carried in a separate account in the name of the depositor as trustee for the person who will receive the benefit of the property and services upon the depositor's death. Sections 345.31 to 345.60 shall not apply to money deposited or received and held in trust pursuant to sections 149.11 to 149.14. All money not used for the purpose intended upon the death of the cestui que trust shall revert to and become a part of the estate.

History: 1953 c 481 s 2; 1967 c 32 s 2; 1971 c 24 s 13; 1979 c 149 s 4; 1986 c 444

149.13 REPORTS.

Subdivision 1. Every funeral establishment which is subject to the trust requirement in section 149.11 and is licensed by the commissioner of health to practice embalming or funeral directing must make a complete annual report to the commissioner of health, disclosing the state of the trust fund including all deposits and withdrawals of principal amounts and all receipts and disbursements. The report shall be filed on forms prescribed by the state auditor by March 31. The report shall be signed and notarized under oath. There shall be paid to the commissioner of health a filing fee of \$15 for each report. The state commissioner of health shall review these reports for indications of violations of this chapter.

Subd. 2. Any person, firm, partnership, association, or corporation which is subject to the trust requirement in section 149.11, but which is not licensed by the commissioner of health to practice embalming or funeral directing, must make a complete written annual report to the county auditor of the county in which the establishment operates. If the establishment is located outside of Minnesota, the report must be filed with the Minnesota county auditor in the county in which the funeral services or personal property is to be delivered. The report must disclose the state of the fund, including all deposits and withdrawals of principal amounts and receipts and disbursements. The report shall be filed on forms prescribed by the state auditor by March 31 for any person, firm, partnership, association, or corporation operating on a calendar year basis and by 90 days after the end of the fiscal year for any person, firm, partnership, association, or corporation operating on a fiscal year basis. The report shall be signed and notarized under oath. There shall be paid to the county auditor a filing fee of \$15 for each report. The county auditor shall review these reports for indications of violations of this chapter.

Subd. 3. Any person, firm, partnership, association, or corporation subject to

subdivision 1 or 2 when changing the trustee must file a notice of change of trustee of the trust fund. If subdivision 1 applies, the trustee change must be filed with the commissioner of health 30 days after the change of trustee. If subdivision 2 applies, the trustee change must be filed with the county auditor 30 days after the change of trustee.

Subd. 4. The county auditor and the commissioner of health must, if they have reason to believe violations of this chapter may exist, report that belief to the state auditor in a timely manner. Every county auditor and the commissioner of health must also file an annual letter by May 31 with the state auditor's office disclosing whether they have detected any indications of violations of this chapter. If the county auditor or commissioner of health has not detected, from the information supplied to them, indications of violations of this chapter, that fact must be reported to the state auditor in the annual letter.

Subd. 5. Upon notification from the county auditor or the commissioner of health of indications of violations of this chapter, 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 an independent audit of the entity in accordance with generally accepted auditing standards and shall inform the appropriate agency of any finding of misconduct. The person, firm, partnership, association, or corporation audited under this section by the state auditor shall reimburse the state auditor for expenses incurred in conducting the audit 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. 6. Any person, firm, partnership, association, or corporation required to hold money in trust under section 149.11 must retain records within Minnesota until three years after the death of the person for whose benefit the money was paid or the money is refunded or delivery occurs pursuant to section 149.11. The records must state on whose behalf the money is held, the location of the money, including any identifying numbers, and the name and address of the institution in which the money is held.

Subd. 7. Unless the data is summary data, data on individuals collected and maintained under this section is private data on individuals and shall not be disclosed except: (1) pursuant to court order; or (2) for law enforcement purposes. Individual is defined as in section 13.02, subdivision 8.

Subd. 8. Any person, firm, partnership, association, or corporation knowingly violating the provisions of this section shall be guilty of a misdemeanor and for a second offense shall be guilty of a gross misdemeanor.

History: 1953 c 481 s 3; 1979 c 149 s 5; 1988 c 509 s 2

149.14 VIOLATIONS.

Any person who willfully violates the provisions of section 149.12 is guilty of a gross misdemeanor.

History: 1953 c 481 s 4; 1955 c 758 s 1

149.15 INJUNCTION.

In addition to the remedies otherwise provided, an action for an injunction may be brought and maintained by the attorney general on behalf of the state of Minnesota, or by any other interested party to enjoin violation of sections 149.11 to 149.14.

History: 1967 c 32 s 3