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CHAPTER 8.

 CREMATION AUTHORIZATIONS AND PROCEDURES

**SECTION 32‑8‑300.** Short title.

 This chapter may be cited as the "Safe Cremation Act".

HISTORY: 1994 Act No. 435, Section 1.

**SECTION 32‑8‑305.** Definitions.

 As used in chapter:

 (1) "Alternative container" means a receptacle, other than a casket, in which human remains are transported to a crematory and placed in a cremation chamber for cremation. An alternative container or cremation casket must be:

 (a) composed of readily combustible materials suitable for cremation;

 (b) resistant to leakage or spillage;

 (c) rigid enough for handling with ease;

 (d) able to provide protection for the health, safety, and personal integrity of crematory personnel.

 (2) "Agent" or "decedent's agent" means a person legally entitled under this chapter to order the cremation and final disposition of specific human remains.

 (3) "Body parts" means limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research; or human bodies or a portion of bodies that have been donated to science for medical research purposes.

 (4) "Board" means the South Carolina State Board of Funeral Service.

 (5) "Burial transit permit" means a permit for disposition of a dead human body as required by law.

 (6) "Casket" means a rigid container that is designed for the encasement of human remains.

 (7) "Change of ownership" means a transfer of more than fifty percent of the stock or assets of a crematory authority.

 (8) "Cremated remains" means all human remains recovered after the completion of a cremation.

 (9) "Cremation" means the technical process using heat and flame that reduces human remains to bone fragments and which may include the pulverization of the bone fragments.

 (10) "Cremation casket" means a rigid wooden, corrugated, fiberboard, or metal container that is designed for the encasement of human remains.

 (11) "Cremation certificate" means a document certifying that a decedent has been cremated and which includes the name of the decedent, the identification number, the date of cremation, the name, address, and phone number of the crematory, and the signature of the crematory authority.

 (12) "Cremation chamber" means the enclosed space within which the cremation takes place.

 (13) "Cremation interment container" means a rigid outer container composed of concrete, steel, bronze, fiberglass or some similar material in which an urn is placed before being interred in the ground and which is designed to withstand prolonged exposure to the elements and to support the earth above the urn.

 (14) "Cremation room" means the room in which a cremation chamber is located.

 (15) "Crematory" means the building or portion of a building that houses the cremation room or the holding facility, or both.

 (16) "Crematory authority" means the legal entity or the authorized representative of the legal entity which is licensed by the South Carolina Funeral Service Board to operate a crematory or a licensed funeral director who performs cremations.

 (17) "Department" means the South Carolina Department of Health and Environmental Control.

 (18) "Final disposition" means the burial, cremation, entombment or other disposition of a dead human body or parts of a dead human body or cremated remains.

 (19) "Foreign matter" means certain items including, but not limited to, body prosthesis, dentures, dental bridgework, dental fillings, jewelry, and any other personal articles accompanying the deceased.

 (20) "Funeral director" means a person licensed by the board to engage for hire or profit in the profession of arranging, directing, or supervising funerals.

 (21) "Funeral establishment" means an establishment in a building or separate portion of a building having a specific street address and location and devoted to activities relating to the shelter, care, custody, and preparation of a deceased human body and which may contain facilities for funerals, wake services, or cremations and for which a permit has been issued pursuant to Section 40‑19‑130.

 (22) "Human remains" means the body of a deceased person, including any form of body prosthesis that has been permanently attached or implanted in the body.

 (23) "Merchandise" means alternative containers, temporary containers, caskets, cremation caskets, rental caskets, urns, and cremation interment containers.

 (24) "Niche" means a compartment or cubicle for the permanent placement of an urn containing cremated remains.

 (25) "Pulverization" means the reduction of identifiable bone fragments after the completion of the cremation process to unidentifiable bone fragments by manual or mechanical means.

 (26) "Scattering area" means an area which may be designated by a cemetery and located on dedicated cemetery property where cremated remains, which have been removed from their container, may be mixed with or placed on top of the soil or ground cover.

HISTORY: 1994 Act No. 435, Section 1.

**SECTION 32‑8‑310.** Crematory; compliance with local zoning regulations.

 A crematory may be constructed on the grounds of a funeral establishment and must be in compliance with local zoning regulations.

HISTORY: 1994 Act No. 435, Section 1.

**SECTION 32‑8‑315.** Execution of a cremation authorization form.

 (A) A person may authorize his or her own cremation and the final disposition of his or her cremated remains by executing a cremation authorization form. A person has the right to revoke this authorization at any time by providing written notice to the funeral establishment which assisted the person in making these arrangements and the crematory authority designated to perform the cremation.

 (B) At the time of death of a person who had executed a cremation authorization form, the person in possession of the executed form and the person charged with making arrangements for the final disposition of the decedent who has knowledge of the existence of the executed form shall ensure that the decedent is cremated and that the final instructions contained on the authorization form are carried out. The crematory authority is required to cremate the human remains and dispose of the cremated remains according to the instructions contained on the cremation authorization form if the crematory authority has a completed authorization form, all permits, and certificates required by law, and the designated human remains.

 (C) A preneed authorization for cremation arranged with a licensed funeral establishment and crematory authority shall specify the final disposition of the cremated remains in accordance with Section 32‑8‑345. If no different or inconsistent instructions are provided to the funeral establishment or the crematory authority by the agent at the time of death, the crematory authority shall release or dispose of the cremated remains as indicated in the preneed agreement.

 (D) No person may revoke a cremation authorization form subsequent to the death of the person who executed the form and the instructions for cremation and disposition of the cremated remains must be complied with unless full payment for the cremation and disposition of the remains has not been received or guaranteed.

HISTORY: 1994 Act No. 435, Section 1.

**SECTION 32‑8‑320.** Persons who may serve as a decedent's agent; authorize cremation.

 (A) In the following order of priority these persons may serve as a decedent's agent and in the absence of a preneed cremation authorization may authorize cremation of the decedent:

 (1) the person designated as agent for this purpose by the decedent in a will or other verified and attested document, or a person named in the decedent's United States Department of Defense Record of Emergency Data Form (DD Form 93), or its successor form, if the decedent died while serving in any branch of the United States Armed Services, as defined in 10 U.S.C. Section 1481, and there is no known designation in a will or other verified and attested document of the decedent;

 (2) the spouse of the decedent, unless the spouse and the decedent are separated pursuant to one of the following:

 (a) entry of a pendente lite order in a divorce or separate maintenance action;

 (b) formal signing of a written property or marital settlement agreement;

 (c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the spouse and the decedent;

 (3) the decedent's surviving adult children;

 (4) the decedent's surviving parents;

 (5) adult siblings of the decedent;

 (6) the adult grandchildren of the decedent;

 (7) the grandparents of the decedent;

 (8) the person appointed by the probate court as the guardian; and

 (9) any other person authorized or under obligation by law to dispose of the body.

 (B) If there is more than one member of a class listed in subsection (A)(1), (3), (4), (5), (6), (7), or (9) entitled to authorize the cremation of the decedent, the authorization to cremate may be made by a member of the class unless the member knows of an objection by another member within the class. If an objection is known, the authorization to cremate only may be made by a majority of the members of the class who are reasonably available.

 (C) A person may not execute an authorization to cremate if a person in a prior class is reasonably available to make or object to the execution of the authorization to cremate the decedent.

 (D) In the absence of a person serving as a decedent's agent pursuant to subsection (A), the following may serve as an agent and may authorize a decedent's cremation:

 (1) a person serving as executor or legal representative of the decedent's estate;

 (2) a public administrator, medical examiner, coroner, state appointed guardian, or other public official charged with arranging the final disposition of the decedent if the decedent is indigent or if the final disposition is the responsibility of the State or an instrumentality of the State; or

 (3) the adult who exhibited special care and concern for the decedent.

 (E) If a dispute arises among persons of equal priority, as provided for in subsection (A), concerning the cremation of a decedent, the matter must be resolved by order of the probate court.

 (F) If a funeral home handling funeral arrangements for a decedent transfers the decedent's body to another funeral home solely for cremation purposes, the funeral home performing the cremation may, in good faith, rely on a cremation authorization document executed at the funeral home handling the funeral arrangements.

HISTORY: 1994 Act No. 435, Section 1; 1998 Act No. 346, Section 1; 2010 Act No. 221, Section 1, eff June 8, 2010; 2012 Act No. 138, Section 1, eff April 2, 2012.

**SECTION 32‑8‑325.** Prerequisites; authority; and receipt of instructions for cremation.

 (A) A crematory authority shall not cremate human remains until it has received all of the following:

 (1) A certified copy of the death certificate; however, if the decedent was pronounced dead during hours the department was not open to the public, a completed copy of the death certificate, excluding the signature of the State Registrar of Vital Statistics, signed by the attending physician must be provided to the crematory authority; the death certificate signed by the registrar must be filed the next working day of the department and a certified copy must be provided to the crematory authority.

 (2) A cremation authorization on a form prescribed by the board and executed by the decedent on a preneed basis or executed by the decedent's agent and which contains:

 (a) the identity of the human remains and the date and time of death;

 (b) the name of the funeral director or funeral establishment responsible for obtaining the authorization;

 (c) the notification of infectious, contagious, or communicable disease or a disease declared by the department to be dangerous to the public health;

 (d) the name, address, and phone number of the agent and the relationship between the agent and the decedent;

 (e) a statement that the agent has the right to authorize the cremation of the decedent, as provided for in Section 32‑8‑320 and that the agent is not aware of a person who has a superior priority right to that of the agent or is not aware of a person of equal priority who disagrees with authorizing the cremation;

 (f) authorization from the agent and the funeral director or funeral establishment for the crematory authority to perform the cremation;

 (g) a statement that, to the best of the agent's knowledge, the human remains do not contain a pacemaker or any other material or implant that may be hazardous or cause damage to the cremation chamber or the person performing the cremation;

 (h) the name of the agent or funeral establishment authorized to receive the cremated remains;

 (i) the method by which disposition of the cremated remains is to take place, if known. If the authorization form does not specify final disposition in a grave, crypt, niche, or scattering area, the form may indicate that the cremated remains are to be held by the crematory authority for thirty days before they are released, unless they are picked up by or shipped to the agent or funeral establishment before that time. At the end of thirty days, if final disposition arrangements have not been made, the crematory authority may return the cremated remains to the agent, crematory authority, or funeral establishment. If at the end of sixty days no final disposition arrangements have been made, the crematory authority or funeral establishment in charge of arrangements may dispose of the cremated remains in accordance with Section 32‑8‑345(D);

 (j) a listing of items of value to be delivered to the crematory authority with the human remains and instructions as to how the items should be handled;

 (k) a specific statement authorizing the crematory authority to proceed with the cremation upon receipt of the human remains;

 (l) the signature of the decedent's agent attesting to the accuracy of all statements contained on the cremation authorization form.

 (3) Completed and executed burial transit permit in accordance with Regulation 61‑19, Section 23.

 (4) A cremation permit obtained in accordance with Section 17‑5‑600 or Section 17‑5‑610.

 (B) If a person who may serve as a decedent's agent pursuant to Section 32‑8‑320 is not available in person to execute a cremation authorization form, the person shall send the funeral establishment a notarized facsimile transmission that contains the person's signature, name, address, phone number, and relationship to the decedent. Upon receipt of the transmission, this person is authorized to serve as the decedent's agent.

 (C) An agent who signs a cremation authorization form is deemed to warrant to the best of the agent's knowledge that the facts set forth on the form are truthful, including that person's authority to order the cremation. An agent signing a cremation authorization form is personally and individually liable for all damages occasioned by and resulting from knowingly providing false information on the cremation authorization form authorizing the cremation.

 (D) No crematory authority which cremated, released, or disposed of human remains is liable if the authority acted in accordance with chapter unless the crematory authority's actions were grossly negligent.

 (E) After an agent has executed a cremation authorization form, the agent may revoke the authorization within twelve hours of its execution and instruct the funeral establishment to instruct the crematory authority to cancel the cremation. The instructions must be provided in writing. A funeral establishment and crematory authority shall honor instructions given to it by an agent under this subsection if it receives the instructions within twelve hours of the agent's execution of authorization form.

HISTORY: 1994 Act No. 435, Section 1; 2001 Act No. 73, Section 5.

**SECTION 32‑8‑330.** Crematory to retain permanent records.

 (A) The crematory authority shall furnish to the person who delivers human remains to the crematory authority a receipt as prescribed by the board signed by the crematory authority or representative and the person who delivers the human remains. It must show the name of the decedent, the date and time of delivery, type casket or alternative container that was delivered, name of the person from whom the human remains were received, and the funeral establishment with whom the person is affiliated, and the name of the person who received the human remains on behalf of the crematory authority.

 (B) The crematory authority shall retain in its permanent records the signature and name of the representative of a funeral establishment or the signature and name of the decedent's agent who received the cremated remains. It must show the name of the deceased, the date and time of the release, and the name of the representative of the crematory authority who released the cremated remains. If the release was to the United States Post Office, the crematory authority shall retain the return receipt requested card.

 (C) A crematory authority shall maintain at its place of business a permanent record of each cremation that took place at its facility. The record shall contain the name of the decedent, the date of the cremation, and the final disposition of the cremated remains, if known.

 (D) The crematory authority shall maintain for ten years a record of all cremated remains disposed of by the crematory authority.

 (E) Upon completion of the cremation, the crematory authority shall file the burial transit permit in accordance with department regulations.

 (F) All cemeteries shall maintain a record of all cremated remains that are disposed of on their property.

HISTORY: 1994 Act No. 435, Section 1.

**SECTION 32‑8‑335.** "Alternative container".

 (A) A crematory authority and funeral establishment may require a decedent's agent to purchase an alternative container to contain the human remains before cremation but may not require the agent to purchase a casket before cremation for viewing or the actual cremation.

 (B) No crematory authority may accept human remains from a funeral establishment unless the remains are delivered in a casket, cremation casket, or an alternative container unless the funeral establishment has made arrangements with the crematory authority to provide the casket, cremation casket, or an alternative container before cremation. Only a licensed crematory may perform cremations of human remains in this State and only a licensed funeral director or a funeral establishment may sell preneed and at‑need merchandise.

 (C) For purposes of this section, "alternative container" means a receptacle other than a casket, in which human remains are transported to a crematory and placed in a cremation chamber for cremation. An alternative container or cremation casket must be:

 (a) composed of readily combustible materials suitable for cremation;

 (b) resistant to leakage or spillage;

 (c) rigid enough for handling with ease;

 (d) able to provide protection for the health, safety, and personal integrity of crematory personnel.

HISTORY: 1994 Act No. 435, Section 1.

**SECTION 32‑8‑340.** Conditions for cremation, time period prior to cremation.

 (A) Human remains may not be cremated before twenty‑four hours have elapsed from the time of death as indicated on the attending physician's, medical examiner's, or coroner's certificate of death. However, if it is known that the decedent had an infectious or dangerous disease and if the time requirement is waived in writing by the attending physician, medical examiner, or coroner in the county in which the death occurred, the remains may be cremated before twenty‑four hours have elapsed.

 (B) No crematory authority shall cremate human remains when the authority has actual knowledge that human remains contain a pacemaker or other material or implant that may be potentially hazardous to the person performing the cremation or to the environment.

 (C) No crematory authority shall refuse to accept human remains for cremation because the remains are not embalmed.

 (D) If a crematory authority is unable or unauthorized to cremate human remains immediately upon taking custody of the remains, the crematory authority shall place the human remains in a holding facility which may be located in a cremation room. Access to a holding facility must be limited to authorized persons and must be constructed and maintained to preserve the health and safety of the crematory authority personnel.

 (E) The casket, cremation casket, or alternative container must be cremated with the human remains or destroyed unless the crematory authority has notified the decedent's agent to the contrary on the cremation authorization form and obtained the written consent of the agent.

 (F) No crematory authority may simultaneously cremate the human remains of more than one person within the same cremation chamber without the prior written consent of the agent. However, nothing in this subsection prevents the simultaneous cremation within the same cremation chamber of body parts that have been used for anatomical study delivered by a licensed hospital or medical facility in this State to the crematory authority from multiple sources or the use of cremation equipment that contains more than one cremation chamber.

 (G) A crematory authority may not remove dental gold, body parts, organs, or any item of value before a cremation without previously having received specific written authorization from the decedent's agent and written instructions on the delivery of these items to the agent. A crematory authority may not profit from taking or assisting in removal of valuables.

 (H) Upon the completion of a cremation, and insofar as is commercially reasonable, the cremated remains and foreign matter of the cremation process must be removed from the cremation chamber and devices used to process cremated remains. Foreign matter must be disposed of as indicated on the authorization form signed by the decedent's agent and particulates and ambient dust must be governed by the department.

 (I) If all of the recovered cremated remains do not fit within the receptacle that has been selected, the remainder of the cremated remains must be returned in a separate container to the decedent's agent. The crematory authority may not return to an agent more or less cremated remains than were removed from the cremation chamber.

 (J) A crematory authority may not knowingly represent to a decedent's agent that a temporary container or an urn contains the cremated remains of a specific decedent when it does not.

 (K) A crematory authority shall maintain an identification system that ensures identification of the human remains while in the authority's possession throughout all phases of the cremation process.

HISTORY: 1994 Act No. 435, Section 1.

**SECTION 32‑8‑345.** Crematory authority or licensed funeral establishments responsibility for the final disposition of the cremated remains.

 (A) The agent or a licensed funeral establishment or crematory authority is responsible for the final disposition of the cremated remains.

 (B) Cremated remains may be disposed of by placing in a grave, crypt, niche, by scattering them in a scattering area, or in any manner on the private property of a consenting owner. If cremated remains are disposed of on public lands or water, all state and federal laws apply.

 (C) Upon completion of the cremation process, if the crematory authority has not been instructed to arrange for the mailing, interment, inurnment, or scattering of the cremated remains, the crematory authority shall deliver in person or mail the cremated remains accompanied by the cremation certificate to the designee specified on the cremation authorization form. If no designee is specified, the cremated remains must be delivered in person or mailed to the decedent's agent. The cremated remains must be delivered in person or delivered to the United States Post Office or to a bonded licensed courier service to be sent by registered and return receipt requested mail. Upon receipt of the cremated remains accompanied by a photocopy of the Burial Transit Permit and Cremation Certificate, the individual receiving them may transport and dispose of them in any manner in accordance with this section. After delivery in person or to the United States Post Office or to a bonded, licensed courier service, the crematory authority is discharged from any legal obligation or liability concerning the cremated remains.

 (D) If after a period of sixty days from the date of cremation the decedent's agent has not instructed the funeral establishment or crematory authority to arrange for final disposition of the cremated remains or claimed the cremated remains, the funeral establishment or crematory authority may dispose of the cremated remains in any manner permitted by this section. The funeral establishment or crematory authority shall keep a permanent record identifying the site of final disposition. The agent is responsible for reimbursing all expenses incurred in disposing of the cremated remains. Upon disposing the cremated remains, the funeral establishment or crematory authority is discharged from any legal obligation or liability concerning the cremated remains. A funeral establishment or crematory authority in possession of remains cremated before July 1, 1994, may dispose of them in accordance with this section.

 (E) Except with the express written permission of the decedent's agent, no person may:

 (1) dispose of cremated remains in a manner or in a location so that the cremated remains are commingled with those of another. This does not apply to the scattering of cremated remains at sea, by air, or in an area located in a dedicated cemetery and used exclusively for the purpose of disposing of cremated remains;

 (2) place cremated remains of more than one person in the same temporary container or urn.

HISTORY: 1994 Act No. 435, Section 1.

**SECTION 32‑8‑350.** Crematory's liability for damages.

 (A) A crematory authority is not liable for damages arising from cremating the human remains designated by a cremation authorization form if the form complies with Section 32‑8‑325 and if the cremation is performed in accordance with this chapter.

 (B) A crematory authority is not liable for damages resulting from refusing to accept or cremate human remains or refusing to release or dispose of cremated remains if the authority is aware of a dispute concerning the remains or if the authority has a reasonable basis for questioning a statement or representation made by the decedent's agent.

 (C) A crematory authority is not responsible or liable for valuables delivered with the human remains unless the crematory authority has received written instructions in accordance with Section 32‑8‑325(A)(2)(j).

 (D) No cemetery is liable for cremated remains that are dumped, scattered, or otherwise deposited on the cemetery in violation of this chapter, if that action is taken without the cemetery's consent.

HISTORY: 1994 Act No. 435, Section 1.

**SECTION 32‑8‑355.** Human remains; presence of pacemaker.

 If a decedent's agent informs the funeral establishment on the cremation authorization form of the presence of a pacemaker in the human remains, the funeral establishment must ensure that all necessary steps have been taken to remove the pacemaker before delivering the human remains to the crematory authority. If the funeral establishment who delivers the human remains to the crematory knows of the presence of a pacemaker in the human remains and fails to ensure that the pacemaker has been removed before delivery and if the remains are cremated with the pacemaker, the funeral establishment who delivered the human remains to the crematory and who knew of the presence of the pacemaker is liable for all resulting damages.

HISTORY: 1994 Act No. 435, Section 1.

**SECTION 32‑8‑360.** Boards; refusal to issue or renew license; suspension or revocation of a funeral director or embalmer.

 (A) The board may refuse to issue or renew the license or may suspend or revoke the license of a funeral director or embalmer who violates a provision of this chapter.

 (B) A person who violates a provision of this chapter is subject to a civil fine not to exceed five thousand dollars.

 (C) The provisions of Section 40‑19‑160 apply to disciplinary actions under this chapter.

HISTORY: 1994 Act No. 435, Section 1.

**SECTION 32‑8‑365.** Solicitation.

 Solicitations under this chapter are governed by Sections 32‑7‑90 and 40‑19‑180.

HISTORY: 1994 Act No. 435, Section 1.

**SECTION 32‑8‑370.** Comprehensive cremation statute.

 This chapter must be construed and interpreted as a comprehensive cremation statute, and the provisions of the article take precedence over any existing laws containing provisions applicable to cremation but that do not specifically or comprehensively address cremation.

HISTORY: 1994 Act No. 435, Section 1.

**SECTION 32‑8‑375.** Continuing education courses for removal and disposition of pacemakers.

 The board shall offer or arrange for continuing education courses addressing the removal and disposition of pacemakers by licensed embalmers.

HISTORY: 1994 Act No. 435, Section 1.

**SECTION 32‑8‑380.** Promulgate regulations.

 The South Carolina State Board of Funeral Service shall promulgate regulations to carry out the provisions of this chapter including, but not limited to, the regulation of crematories whether or not constructed on the grounds of a funeral establishment.

HISTORY: 1994 Act No. 435, Section 1.

**SECTION 32‑8‑385.** Requirement for at least one trained individual in performing cremations.

 A crematory is required to have in its employ at least one individual who has been trained in performing cremations by the licensed crematory authority who is his employer, by the manufacturer of the equipment to be used to perform cremations, or by some other appropriate method as provided by regulation of the board. Upon meeting the above requirements, this individual is considered to be sufficiently trained for purposes of this chapter.

HISTORY: 1994 Act No. 435, Section 1.