CHAPTER 19

Embalmers and Funeral Directors

**SECTION 40‑19‑5.** Application of chapter; conflicts of law.

Unless otherwise provided for in this chapter, Article 1, Chapter 1 applies to embalmers and funeral directors; however, if there is a conflict between this chapter and Article 1, Chapter 1, the provisions of this chapter control.

HISTORY: 1998 Act No. 380, Section 1.

Library References

Dead Bodies 1.

Licenses 8(1).

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 23 to 24.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Funeral Directors and Embalmers Section 2, Definitions and Distinctions.

S.C. Jur. Funeral Directors and Embalmers Section 3, Licensing Authority.

**SECTION 40‑19‑10.** Board of Funeral Service; creation; membership; conduct of business by positive majority vote.

There is created the South Carolina State Board of Funeral Service consisting of eleven members appointed by the Governor from the State at large for terms of three years and until their successors are appointed and qualify. Of the eleven members, two must be members from the general public not connected with a funeral service establishment, and the remaining members must have been licensed as funeral directors and embalmers for at least five years immediately preceding their appointment and must be actively employed or actively engaged in the funeral service profession. All members must have been residents of this State for not fewer than five years preceding the date of their appointment.

The South Carolina Funeral Directors Association may recommend six members, the South Carolina Morticians Association may recommend three members, and an individual or private or public group or organization may make recommendations. All recommendations must be made to the Governor before the second of July in each year the term of office of a member expires. Appointments are effective on August fifteenth. Vacancies must be filled in the manner of original appointment for the unexpired portion of the term. The board shall notify the South Carolina Funeral Directors Association and the South Carolina Morticians Association of any vacancies that occur.

Any business conducted by the board must be by a positive majority vote. For purposes of this subsection “positive majority vote” means a majority vote of the entire membership of the board, reduced by any vacancies existing at the time.

HISTORY: 1998 Act No. 380, Section 1; 2002 Act No. 322, Section 3.

Editor’s Note

Prior Laws:1955 (49) 550; 1962 Code Section 56‑652; 1965 (54) 518; 1968 (55) 2706; 1971 (57) 327; 1973 (58) 787; 1983 Act No. 146, Section 1; 1984 Act No. 459, Section 1; 1976 Code Section 40‑19‑20.

CROSS REFERENCES

Regulations for Board of Funeral Service, see S.C. Code of Regulations R. 57‑01 et seq.

Library References

Dead Bodies 1.

Licenses 21.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 58 to 60.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Dead Bodies Section 2, Definitions.

S.C. Jur. Funeral Directors and Embalmers Section 3, Licensing Authority.

**SECTION 40‑19‑20.** Definitions.

As used in this chapter:

(1) “Advertisement” means the publication, dissemination, circulation, or placing before the public an announcement or statement in a newspaper, magazine, or other publication in the form of a book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, or tag, or over radio, television, or Internet. The term does not include funeral or death notices and obituaries.

(2) “Aiding and abetting” means allowing or permitting an Internet service provider, unlicensed person, establishment, or entity to engage in the practice of funeral service, embalming, cremating, or conducting business as a funeral home, funeral establishment, crematory, or mortuary; provided, however, that ‘aiding and abetting’ does not include the publication, dissemination, circulation, or placing before the public by an Internet service provider of an advertisement prepared by an unaffiliated or unlicensed person or entity.

(3) “Apprentice” means a person who is preparing to become licensed for the practice of embalming and funeral directing under the supervision and instruction of a person licensed for the practice in this State and who is registered with the board pursuant to Section 40‑19‑120.

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

(5) “Branch funeral home” means an establishment separate and apart from the licensed parent funeral home that has embalming facilities, a chapel, a lay‑out room, or a sales room, or any combination of these.

(6) “Cremation” means the reduction of the dead body by intense heat to residue.

(7) “Crematory” means an establishment in which the dead body is reduced to residue by intense heat.

(8) “Disposition” means the final disposal of the body whether by earth interment, aboveground burial, cremation, burial at sea, or delivery to a medical institution for lawful dissection and experimentation or removal from the State pursuant to obtaining a burial transit permit.

(9) “Embalmer” means a person licensed by the board to disinfect and preserve or attempt to disinfect and preserve the dead human body, entirely or in part, by the use of application of chemicals, fluids, or gases, externally or internally, or both, by their introduction into the body by vascular or hypodermic injections, by direct application into the organs or cavities, or by other method and includes the restoration or attempted restoration of the appearance of the dead human body.

(10) “Embalming” means the disinfection of the dead human body by replacing certain body fluids with preserving and disinfecting chemicals.

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

(12) “Funeral home”, “funeral establishment”, or “mortuary” means an establishment where the practice of funeral service and embalming is practiced. All of these establishments must include the following facilities:

(a) a chapel or parlor in which funeral services may be conducted;

(b) a preparation room equipped with a sanitary floor and necessary drainage, ventilation, necessary approved tables, hot and cold running water, and a sink separate from table drainage, instruments, and supplies for the preparation and embalming of dead human bodies;

(c) a room containing a displayed stock of at least six adult caskets and other necessary funeral supplies;

(d) at least one motor hearse for transporting casketed human remains.

(13) “Funeral merchandise” means that personal property used in connection with the conduct of funerals or with the transportation and final disposition of a dead human body including, but not limited to, caskets, cremation caskets, urns, and burial clothing. The term does not mean mausoleum crypts, interment receptacles preset in a cemetery, and columbarium niches.

(14) “Funeral service” or “funeral” means a period following death in which there are religious services or other rites or ceremonies with the body of the deceased present.

(15) “Graveside service” means a rite or ceremony held only at graveside, which is not generally construed as the committal service which follows a funeral.

(16) “Inspector” means an inspector employed by the Department of Labor, Licensing and Regulation.

(17) “Manager” means a licensed funeral director who has been licensed in this State for at least one year, who is a full‑time regular employee, and who is responsible for and has the binding authority from the owner for the day‑to‑day management of funeral establishments or crematories including compliance with all applicable laws governed by this chapter and Chapters 7 and 8, Title 32.

(18) “Memorial service” means a gathering of persons for a program in recognition of a death without the presence of the body of the deceased.

(19) “Practice of funeral service” means:

(a) engaging in providing shelter, care, and custody of the human dead;

(b) the practice of preparing the human dead by embalming or other methods for burial or other disposition;

(c) arranging for the transportation of the human dead;

(d) making arrangements at or before the time of death, financial or otherwise, including arrangements for cremation, for providing these services, or the sale of funeral merchandise, whether for present or future use; provided, that no funeral director, embalmer, funeral company, cemetery, or related entity shall charge a fee for the assignment to the funeral director, embalmer, funeral company, cemetery, or related entity of an insurance policy providing burial expenses, excluding preneed contracts as provided in Section 32‑7‑35; and

(e) engaging in the practice or performing any functions of funeral directing or embalming as presently recognized by persons engaged in these functions.

(20) “Retail sales outlet” means an establishment wherein funeral merchandise is sold or provided, or both, to the general public. A retail sales outlet may not contain lay‑out or chapel facilities and is restricted solely to the sale of funeral merchandise and may not handle or arrange for the handling or disposition, or both, of dead human remains and may not offer or execute preneed funeral contracts, except as authorized by Chapter 7, Title 32.

(21) “Owner” means a sole proprietor, partnership, limited partnership, corporation, limited liability corporation, or any business entity possessing authority and control over a funeral establishment.

HISTORY: 1998 Act No. 380, Section 1; 2002 Act No. 322, Section 4; 2007 Act No. 74, Section 2; 2018 Act No. 135 (S.185), Section 1, eff March 12, 2018.

Editor’s Note

Prior Laws:1955 (49) 550; 1962 Code Section 56‑651; 1967 (55) 937; 1971 (57) 327; 1983 Act No. 146, Section 1; 1984 Act No. 459, Section 1; 1993 Act No. 181, Section 888; 1976 Code Section 40‑19‑10.

Effect of Amendment

2018 Act No. 135, Section 1, in (1), substituted “radio, television, or Internet” for “radio or television”; inserted (2), relating to the definition of “aiding and abetting”; redesignated former (2) to (20) as (3) to (21); and made nonsubstantive changes.

CROSS REFERENCES

“Funeral home”, “funeral establishment”, and “mortuary” defined, veteran’s unclaimed cremated remains, see Section 25‑12‑20.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Dead Bodies Section 2, Definitions.

S.C. Jur. Dead Bodies Section 19, Embalming.

S.C. Jur. Funeral Directors and Embalmers Section 2, Definitions and Distinctions.

Attorney General’s Opinions

State law provides that if any activities associated with a private funeral would include activities that come within the definition of “the practice of funeral service” such must be performed by a licensed funeral director or embalmer, depending on the circumstances. 1992 S.C. Op.Atty.Gen. 92, 1992 S.C. Op.Atty.Gen. No. 92‑38, (July 20, 1992) 1992 WL 575644.

**SECTION 40‑19‑30.** Required licenses; permit restrictions regarding unlicensed persons; exemption.

It is unlawful for a person to engage in the practice of funeral service unless the person is licensed in accordance with this chapter. A person who engages or participates actively in directing or in the management of a funeral establishment is considered to be in the practice of funeral service.

No permit to operate a funeral home may be issued to a corporation, partnership, or individual when the name of an unlicensed person appears in the name of the corporation, partnership, or individually owned business. This prohibition does not apply to established funeral homes existing prior to July 1, 1969.

HISTORY: 1998 Act No. 380, Section 1.

Editor’s Note

Prior Laws:1955 (49) 550; 1962 Code Section 56‑662; 1969 (56) 925; 1973 (58) 787; 1983 Act No. 146, Section 1; 1976 Code Section 40‑19‑130.

Library References

Dead Bodies 1.

Licenses 11(1), 25.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 51, 53, 55, 64, 77.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Funeral Directors and Embalmers Section 4, License Qualifications.

NOTES OF DECISIONS

In general 1

1. In general

The prime object of this law regulating the practice of embalming is the protection of the public from ignorance and imposture, and its prohibition applies to all persons who have not shown themselves to be possessed of the qualifications required by this section [Code 1962 Section 56‑666]. (Construing former similar provisions) State v. Blackwell (S.C. 1941) 196 S.C. 313, 13 S.E.2d 433. Licenses 1; Licenses 20

**SECTION 40‑19‑50.** Administrative and fiscal activities of board to be provided by Department of Labor, Licensing and Regulation.

The Department of Labor, Licensing and Regulation shall provide all administrative, fiscal, investigative, inspectional, clerical, secretarial, and license renewal operations and activities of the board in accordance with Section 40‑1‑50.

HISTORY: 1998 Act No. 380, Section 1.

Code Commissioner’s Note

At the direction of the Code Commissioner, reference to Section 41‑1‑50 was changed to Section 40‑1‑50.

Library References

Dead Bodies 1.

Licenses 21.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 58 to 60.

**SECTION 40‑19‑60.** Adoption of rules and regulations.

The board may adopt rules governing its proceedings and may promulgate regulations necessary to carry out the provisions of this chapter.

HISTORY: 1998 Act No. 380, Section 1.

Editor’s Note

Prior Laws:1955 (49) 550; 1962 Code Section 56‑658; 1971 (57) 327; 1983 Act No. 146, Section 1; 1990 Act No. 592, Section 2; 1991 Act No. 70, Section 1; 1976 Code Section 40‑19‑90.

CROSS REFERENCES

Records, crematory requirements, see S.C. Code of Regulations R. 57‑14.1 et seq.

Library References

Dead Bodies 1.

Licenses 21.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 58 to 60.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Funeral Directors and Embalmers Section 3, Licensing Authority.

NOTES OF DECISIONS

In general 1

1. In general

An administrative rule promulgated by the Board of Funeral Service that required a 24 month period of service as an apprentice funeral director was void and unenforceable in that it added to the 12 month minimum apprenticeship required by statute; an additional administrative regulation requiring an applicant for a funeral director’s license to show that he had participated in not less than 60 funeral services while serving as an apprentice was also invalidated as unreasonable. Brooks v. South Carolina State Bd. of Funeral Service (S.C. 1978) 271 S.C. 457, 247 S.E.2d 820.

**SECTION 40‑19‑70.** Powers and duties in addition to those in this chapter.

In addition to the powers and duties provided for in this chapter, the board also has those powers and duties set forth in Section 40‑1‑70.

HISTORY: 1998 Act No. 380, Section 1.

CROSS REFERENCES

Records, crematory requirements, see S.C. Code of Regulations R. 57‑14.1 et seq.

Library References

Dead Bodies 1.

Licenses 21.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 58 to 60.

**SECTION 40‑19‑80.** Inspector to be hired by board; qualifications.

The board shall employ an inspector who must be a licensed embalmer and funeral director with not fewer than five consecutive years’ experience as a licensee under this chapter.

HISTORY: 1998 Act No. 380, Section 1.

CROSS REFERENCES

Inspection guidelines, see S.C. Code of Regulations R. 57‑15.

Library References

Dead Bodies 1.

Licenses 21.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 58 to 60.

**SECTION 40‑19‑90.** Investigation results; presentation to board; procedures for hearing.

The results of an investigation must be presented to the board, and any subsequent hearing must be conducted in accordance with Section 40‑1‑90.

HISTORY: 1998 Act No. 380, Section 1.

Library References

Dead Bodies 1.

Licenses 38.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 80, 82 to 100.

**SECTION 40‑19‑100.** Restraining orders and other equitable relief.

In addition to other remedies provided for in this chapter or Article 1, Chapter 1, the board in accordance with Section 40‑1‑100 may issue a cease and desist order or may petition an administrative law judge for a temporary restraining order or other equitable relief to enjoin a violation of this chapter.

HISTORY: 1998 Act No. 380, Section 1.

Library References

Injunction 89(5).

Westlaw Topic No. 212.

C.J.S. Injunctions Sections 242 to 243, 245 to 247.

**SECTION 40‑19‑110.** Unprofessional conduct; refusal to issue or renew license; suspension or revocation of license; probation.

The board may refuse to issue or renew or may suspend or revoke the license of a funeral director or embalmer or may place the licensee on probation after notice and a hearing for unprofessional conduct which includes:

(1) making misrepresentations or committing fraud while engaging in the practice of funeral service;

(2) using false or misleading advertising or using the name of an unlicensed person in connection with that of a funeral establishment. An advertisement must include the physical address of the funeral home, funeral establishment, mortuary, or crematory where the advertised services will be provided. The board shall promulgate regulations establishing additional requirements for advertisements relating to providing funeral services, including Internet advertisements;

(3) soliciting dead human bodies or soliciting the sale of funeral merchandise by a licensee or an agent, assistant, or employee of a licensee or of any establishment licensed or permitted under this chapter, whether the solicitation occurs after death or while death is impending, but not including general advertising;

(4) employing persons known as “cappers” or “steerers” or “solicitors” or other persons to obtain business for the licensee;

(5) employing directly or indirectly an apprentice, agent, assistant, employee, or other person, on a part or full‑time basis, or on commission, for the purpose of calling upon individuals or institutions to influence them to cause dead human bodies to be turned over to a particular funeral establishment;

(6) directly or indirectly paying or offering to pay a commission by a licensee or a licensee’s agents, assistants, or employees to secure business; however, compliance with Chapter 7 of Title 32 is not unprofessional conduct;

(7) aiding or abetting an unlicensed person to engage in the practice of funeral service;

(8) using any funeral merchandise previously sold without prior written permission of the person selecting or paying for the use of the merchandise;

(9) refusing to properly release a dead human body to the custody of the person or entity who has the legal right to effect a release;

(10) failing to secure a permit for removal or burial of a dead human body before interment or disposal;

(11) knowingly making a false statement on a certificate of death;

(12) violating applicable state laws relating to the prearrangement or prefinancing of a funeral;

(13) discriminating in services because of race, creed, color, or national origin;

(14) violating a state or federal law or municipal or county ordinance or regulation concerning funeral establishments or the practice of funeral service;

(15) permitting an unlicensed person to engage in the practice of funeral service.

(16) an embalmer, funeral director, funeral company, cemetery, or related entity charging a fee for assignment to the embalmer, funeral director, funeral company, cemetery, or related entity of an insurance policy providing burial expenses, excluding preneed contracts as provided in Section 32‑7‑35.

HISTORY: 1998 Act No. 380, Section 1; 2002 Act No. 322, Section 5; 2004 Act No. 188, Section 6; 2007 Act No. 74, Section 3; 2018 Act No. 135 (S.185), Section 2, eff March 12, 2018.

Editor’s Note

Prior Laws:1955 (49) 550; 1962 Code Section 56‑668; 1967 (55) 937; 1983 Act No. 146, Section 1; 1976 Code Section 40‑19‑180.

Effect of Amendment

2018 Act No. 135, Section 2, in (2), added the second and third sentences, providing requirements for funeral service advertisements.

Library References

Dead Bodies 1.

Licenses 20, 38.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 62 to 66, 80, 82 to 100.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Funeral Directors and Embalmers Section 5, Suspension, Revocation and Disciplinary Action.

**SECTION 40‑19‑115.** Jurisdiction of board.

The board has jurisdiction over the actions of licensees and former licensees as provided for in Section 40‑1‑115.

HISTORY: 1998 Act No. 380, Section 1.

Library References

Dead Bodies 1.

Licenses 21.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 58 to 60.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Funeral Directors and Embalmers Section 3, Licensing Authority.

**SECTION 40‑19‑120.** Board authority to take disciplinary action.

In addition to the sanctions the board may impose against a person pursuant to this chapter, the board also may take disciplinary action against a person as provided for in Section 40‑1‑120.

HISTORY: 1998 Act No. 380, Section 1.

Library References

Dead Bodies 1.

Licenses 21, 38.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 58 to 60, 80, 82 to 100.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Funeral Directors and Embalmers Section 5, Suspension, Revocation and Disciplinary Action.

**SECTION 40‑19‑130.** Grounds for denial of license may be same as for disciplinary action.

As provided for in Section 40‑1‑130, the board may deny licensure to an applicant based on the same grounds for which the board may take disciplinary action against a licensee.

HISTORY: 1998 Act No. 380, Section 1.

Library References

Dead Bodies 1.

Licenses 20, 38.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 62 to 66, 80, 82 to 100.

**SECTION 40‑19‑140.** Denial of license based on prior criminal record.

A license may be denied based on a person’s prior criminal record only as provided for in Section 40‑1‑140.

HISTORY: 1998 Act No. 380, Section 1.

Library References

Dead Bodies 1.

Licenses 20.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 62 to 66.

**SECTION 40‑19‑150.** Voluntary surrender of license by licensee being investigated.

A licensee under investigation for a violation of this chapter or a regulation promulgated under this chapter voluntarily may surrender the license in accordance with Section 40‑1‑150.

HISTORY: 1998 Act No. 380, Section 1.

Library References

Dead Bodies 1.

Licenses 38.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 80, 82 to 100.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Funeral Directors and Embalmers Section 5, Suspension, Revocation and Disciplinary Action.

**SECTION 40‑19‑160.** Appeal.

A person aggrieved by a final action of the board may seek review of the decision in accordance with Section 40‑1‑160.

HISTORY: 1998 Act No. 380, Section 1.

Library References

Dead Bodies 1.

Licenses 38, 41.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 80, 82 to 100, 121 to 124.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Funeral Directors and Embalmers Section 5, Suspension, Revocation and Disciplinary Action.

**SECTION 40‑19‑170.** Costs of investigation and prosecution; authority to require payment by violator.

A person found in violation of this chapter or a regulation promulgated under this chapter may be required to pay costs associated with the investigation and prosecution of the case in accordance with Section 40‑1‑170.

HISTORY: 1998 Act No. 380, Section 1.

Library References

Dead Bodies 1.

Licenses 41.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 121 to 124.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Funeral Directors and Embalmers Section 5, Suspension, Revocation and Disciplinary Action.

**SECTION 40‑19‑180.** Collection and enforcement provisions for costs and fines.

All costs and fines imposed pursuant to this chapter must be paid in accordance with and are subject to the collection and enforcement provisions of Section 40‑1‑180.

HISTORY: 1998 Act No. 380, Section 1.

Library References

Dead Bodies 1.

Licenses 41.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 121 to 124.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Funeral Directors and Embalmers Section 5, Suspension, Revocation and Disciplinary Action.

**SECTION 40‑19‑190.** Confidentiality of proceedings and communications.

Investigations and proceedings conducted under this chapter are confidential, and all communications are privileged as provided for in Section 40‑1‑190.

HISTORY: 1998 Act No. 380, Section 1.

Editor’s Note

Prior Laws:1983 Act No. 146, Section 1; 1976 Code Section 40‑19‑170.

Library References

Licenses 38.

Privileged Communications and Confidentiality 423.

Records 60.

Westlaw Topic Nos. 238, 311H, 326.

C.J.S. Licenses Sections 80, 82 to 100.

C.J.S. Records Sections 126, 139 to 142.

C.J.S. Witnesses Sections 370 to 371.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Funeral Directors and Embalmers Section 5, Suspension, Revocation and Disciplinary Action.

**SECTION 40‑19‑200.** Violations of chapter; submission of false licensing information; penalties.

A person who practices or offers to practice funeral service in this State in violation of this chapter or who knowingly submits false information for the purpose of obtaining a license is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or more than twenty‑five hundred dollars or imprisoned for not more than six months, or both.

HISTORY: 1998 Act No. 380, Section 1.

Library References

Dead Bodies 7.

Licenses 40.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 27 to 29.

C.J.S. Licenses Sections 125 to 126.

NOTES OF DECISIONS

In general 1

1. In general

A single act of unlicensed embalming is as much a violation of the law as repeated acts of unlicensed practice. State v. Blackwell (S.C. 1941) 196 S.C. 313, 13 S.E.2d 433.

**SECTION 40‑19‑210.** Petition by department for injunctive relief.

The department, on behalf of the board and in accordance with Section 40‑1‑120, may petition an administrative law judge, in the name of the State, for injunctive relief against a person violating this chapter.

HISTORY: 1998 Act No. 380, Section 1.

Library References

Injunction 89(5).

Westlaw Topic No. 212.

C.J.S. Injunctions Sections 242 to 243, 245 to 247.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Funeral Directors and Embalmers Section 5, Suspension, Revocation and Disciplinary Action.

**SECTION 40‑19‑230.** Qualifications for license as embalmer or funeral director; examinations; conditions for licensure without examination; renewal of licenses.

(A) A person may be issued a license as an embalmer if the person:

(1) is at least eighteen years of age;

(2) has not been convicted of a violent crime or found guilty of a felony or crime of moral turpitude;

(3) has a high school education or the equivalent of a high school education, the equivalence to be determined by the board;

(4) has completed successfully a regular course in an embalming college accredited by the American Board of Funeral Service Education and approved by the board;

(5) has completed a minimum of twenty‑four months of service pursuant to Section 40‑19‑240 as an apprentice under the direct supervision of a licensed embalmer actively engaged in the practice of embalming in this State;

(6) has passed an examination prescribed by the board.

(B) A person may be issued a license as a funeral director if the person:

(1) is at least eighteen years of age;

(2) has not been convicted of a violent crime or found guilty of a felony or crime of moral turpitude;

(3) has a high school education or the equivalent of a high school education and has a minimum of two years of successful attendance at an accredited academic college or successful completion of a regular course of not less than one year, twelve scholastic months, in an accredited mortuary college;

(4) has completed a minimum of twenty‑four months of service pursuant to Section 40‑19‑240 as an apprentice funeral director under the direct supervision of a licensed funeral director actively engaged in the practice of funeral directing in this State;

(5) has passed an examination prescribed by the board.

(C) An applicant for licensure must be examined on subjects as are prescribed by the board and the examination must be by a standardized written test. The passing grade must be established by the board in regulation.

An application for examination must be upon a form furnished by the board and must be accompanied by a fee established by the board in regulation. An application for examination must be submitted at least thirty days before the date of the examination.

(D) No license may be issued or renewed for a period exceeding two years, and all licenses and renewals expire on the thirtieth day of June unless sooner revoked or canceled. The date of expiration may be changed by unanimous consent of the board and upon ninety days’ written notice of the change to all persons licensed by the board.

(E) A person holding a license under this chapter may have the license renewed for a two‑year period by applying within thirty days preceding or following the expiration of his license, upon forms provided by the board and payment of a renewal fee as established by the board in regulation. A person who fails to renew the license, at the discretion of the board, may have it renewed by making application and appearing before the board and paying a renewal and revival fee established by the board. The license of a person who is engaged actively in the military service of the United States may be held in abeyance for the duration of service, and the licensee may be relieved of the payment of renewal fees as the board considers justifiable and expedient.

(F) A permit for a crematory or a permit for a funeral establishment which operates a crematory may be renewed for a two‑year period by applying within thirty days preceding or following the expiration of the permit, upon forms provided by the board, payment of a renewal fee as established by the board in regulation and passage of an inspection conducted by the board.

HISTORY: 1998 Act No. 380, Section 1; 2002 Act No. 322, Section 6.

Editor’s Note

Prior Laws:1962 Code Section 56‑677; 1971 (57) 327; 1983 Act No. 146, Section 1; 1976 Code Section 40‑19‑100.

CROSS REFERENCES

Training of certified crematory trainer/preceptors, crematory requirements, see S.C. Code of Regulations R. 57‑14.4.

Library References

Dead Bodies 1.

Licenses 20, 22.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 62 to 66, 70 to 72.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Funeral Directors and Embalmers Section 4, License Qualifications.

Attorney General’s Opinions

An employee of the University of South Carolina may embalm dead human bodies for the primary purpose of medical research and training, without being licensed by the State Board of Funeral Service. 1976 S.C. Op.Atty.Gen. 221, 1976 S.C. Op.Atty.Gen.No. 4386, (July 1, 1976) 1976 WL 23004.

**SECTION 40‑19‑235.** Licensure requirements of applicant holding valid license in another state.

A person holding a valid embalmer or funeral director license in another state or territory having substantially similar requirements to the requirements of this chapter may apply for a license to practice in this State by submitting the appropriate nonrefundable fee, an application on a board‑approved form, and a board‑certified statement from the state or territory in which the person holds the license and has successfully taken and passed that state law exam. The board may approve an applicant who presents evidence of licensure in another jurisdiction, even though that jurisdiction does not require substantially similar requirements, upon a showing that the applicant has engaged in the licensed practice of funeral service for at least five years and the applicant has achieved a passing score on an examination approved by the board.

HISTORY: 2002 Act No. 322, Section 1.

Library References

Dead Bodies 1.

Licenses 20, 22.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 62 to 66, 70 to 72.

**SECTION 40‑19‑240.** Apprentices; application; certificate; periodic reporting; eligibility for licensure; sponsor limitations.

(A) A person desiring to become an apprentice funeral director or embalmer shall apply to the board on forms provided by the board. The applicant must be at least eighteen years of age, shall take the oath contained on the application form, and shall submit a fee established by the board in regulation. If the board is satisfied as to the qualifications of an applicant, the board shall issue a certificate of apprenticeship. If an apprentice wishes to engage in an apprenticeship with a person licensed as a funeral director or embalmer, a request must be submitted to the board. If permission is granted and the apprentice leaves the apprenticeship of the licensee in whose service the apprentice has been engaged, the licensee shall give the apprentice an affidavit showing the length of time served. The affidavit must be filed with the board. If the apprentice subsequently desires to continue the apprenticeship, the apprentice must apply to the board as provided for in this subsection.

(B) A certificate of apprenticeship must be signed by the apprentice, the licensee, and the manager of the establishment in which the apprenticeship is to be served and is renewable twenty‑four months after registration for twelve months, by payment of a renewal fee established by the board in regulation. A certificate may not be renewed more than three times. The registration of an apprentice who is actually engaged in the military service may be held in abeyance for the duration of service, and the apprentice may be relieved of the payment of renewal fees and penalties.

(C) An apprentice quarterly shall report to the board on forms provided by the board indicating the work which has been completed during the preceding three months. The report must be certified by the licensee under whom the apprentice has served.

(D) Before an apprentice is eligible to receive a license for the practice of funeral service, evidence required by this chapter must be submitted to the board showing that the apprentice has completed successfully the educational requirements set forth in Section 40‑19‑230. Affidavits also must be submitted from the licensees under whom the apprentice worked showing that as an apprentice embalmer the apprentice has assisted in the embalming of at least fifty bodies or that as an apprentice funeral director the apprentice has assisted in conducting at least fifty funerals, during apprenticeship. Eligibility for licensure is determined by the board based upon the reports filed with the board pursuant to subsection (C).

(E) Only two apprentices at a time are permitted to register under any one person licensed as a funeral director or embalmer. Each sponsor for a registered apprentice must be actively connected with a funeral establishment.

HISTORY: 1998 Act No. 380, Section 1.

Editor’s Note

Prior Laws:1955 (49) 550; 1962 Code Section 56‑660; 1983 Act No. 146, Section 1; 1976 Code Section 40‑19‑120.

CROSS REFERENCES

Apprenticeship requirements, Department of Labor, Licensing and Regulation, South Carolina State Board of Funeral Service, see S.C. Code of Regulations R. 57‑06.1.

Library References

Dead Bodies 1.

Licenses 11(1), 22.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 51, 53, 55, 70 to 72.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Funeral Directors and Embalmers Section 3, Licensing Authority.

NOTES OF DECISIONS

In general 1

1. In general

An administrative rule promulgated by the Board of Funeral Service that required a 24 month period of service as an apprentice funeral director was void and unenforceable in that it added to the 12 month minimum apprenticeship required by statute; an additional administrative regulation requiring an applicant for a funeral director’s license to show that he had participated in not less than 60 funeral services while serving as an apprentice was also invalidated as unreasonable. Brooks v. South Carolina State Bd. of Funeral Service (S.C. 1978) 271 S.C. 457, 247 S.E.2d 820.

**SECTION 40‑19‑245.** Student permits to engage in practice of funeral service.

(A) Upon registration with the South Carolina State Board of Funeral Service, the board shall issue a student permit authorizing the student to engage in the practice of funeral service if:

(1) the student is enrolled in an accredited mortuary science college or mortuary science college or a program in the process of seeking accreditation in South Carolina;

(2) the funeral service activities in which the student engages are in conjunction with the student’s academic training; and

(3) the student’s funeral service activities are under the supervision of a licensee designated by an accredited mortuary science college in South Carolina.

(B) The board shall promulgate regulations to implement the provisions of this section.

HISTORY: 1998 Act No. 404, Section 1.

Library References

Dead Bodies 1.

Licenses 20.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 62 to 66.

**SECTION 40‑19‑250.** Continuing education program; persons exempt.

The board shall develop in regulation a continuing education program and each licensee must attend a minimum of three credit hours annually. This continuing education program must be offered, at a minimum, four times a year at locations easily accessible to participants and must be available through correspondence courses. This continuing education requirement does not apply to a person who is not the manager of record of a funeral home, funeral establishment, or mortuary if the person has been licensed for thirty or more years or is sixty years old or older.

HISTORY: 1998 Act No. 380, Section 1.

Library References

Dead Bodies 1.

Licenses 25.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 64, 77.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Funeral Directors and Embalmers Section 3, Licensing Authority.

**SECTION 40‑19‑260.** Business establishment; presence of funeral director required.

The practice of funeral service may be engaged in only at a licensed establishment. A licensed funeral director shall make arrangements with clients and must be at the place of the funeral and committal services.

HISTORY: 1998 Act No. 380, Section 1.

Editor’s Note

Prior Laws:1983 Act No. 146, Section 1; 1976 Code Section 40‑19‑110.

Library References

Dead Bodies 1.

Licenses 11(1), 25.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 3.

C.J.S. Licenses Sections 51, 53, 55, 64, 77.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Dead Bodies Section 21, Funerals.

S.C. Jur. Funeral Directors and Embalmers Section 4, License Qualifications.

**SECTION 40‑19‑265.** Permit requirements for funeral homes.

(A) A permit for a funeral home may be issued if the applicant:

(1) submits an application on a form approved by the board;

(2) submits to and successfully passes an inspection approved by the board;

(3) submits the applicable nonrefundable fee;

(4) designates a manager who meets the requirements of Section 40‑19‑20(16) and is current and in good standing with the board and lives within a radius of twenty‑five miles of the establishment;

(5) possesses the necessary equipment or merchandise, or both, required by regulation;

(6) is in full compliance with Section 40‑19‑290.

(B) A permit for a branch funeral home may be issued if the applicant:

(1) submits an application on a form approved by the board;

(2) submits to and successfully passes an inspection approved by the board;

(3) submits the applicable nonrefundable fee;

(4) designates a manager who meets the requirements of Section 40‑19‑20(16) and is current and in good standing with the board and lives within a radius of twenty‑five miles of the establishment;

(5) possesses the necessary equipment or merchandise, or both, required by regulation;

(6) is in full compliance with Section 40‑19‑290;

(7) provides the name of the parent funeral home.

(C) A permit for a retail sales outlet may be issued if the applicant:

(1) submits an application on a form approved by the board;

(2) submits to and successfully passes an inspection approved by the board;

(3) submits the applicable nonrefundable fee;

(4) is in full compliance with Section 40‑19‑290.

(D) A permit for a crematory may be issued if the applicant:

(1) submits an application on a form approved by the board;

(2) submits to and successfully passes an inspection approved by the board;

(3) submits the applicable nonrefundable fee;

(4) designates a manager who meets the requirements of Section 40‑19‑20(16) and is current and in good standing with the board and lives within a radius of twenty‑five miles of the establishment;

(5) possesses the necessary equipment or merchandise, or both, required by regulation;

(6) is in full compliance with Section 40‑19‑290;

(7) provides evidence of employment of a factory trained operator.

(E) An application for a permit issued pursuant to this section must identify every person having the ability to direct the management or policies, or both, of the funeral establishment including, but not limited to, corporate officers employed, shareholders, partners, and other representatives of the corporation or business.

HISTORY: 2002 Act No. 322, Section 2.

CROSS REFERENCES

Equipment and practices, crematory requirements, see S.C. Code of Regulations R. 57‑14.2.

Records, crematory requirements, see S.C. Code of Regulations R. 57‑14.1.

Training of crematory operators, crematory requirements, see S.C. Code of Regulations R. 57‑14.3.

Library References

Licenses 11(1), 20, 22.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 51, 53, 55, 62 to 66, 70 to 72.

**SECTION 40‑19‑270.** Permit for funeral establishment; funeral services in private residence, church, or lodge; inspection of premises; residence of funeral director; application for permits; partnership or corporation operating funeral establishment.

(A) No person shall conduct, maintain, manage, or operate a funeral establishment, crematory, or retail sales outlet unless a permit for each establishment, retail sales outlet, or crematory has been issued by the board and is displayed conspicuously in the funeral establishment crematory, or retail sales outlet.

(B) The board or its inspector or agents may enter the offices or premises of a funeral establishment, funeral home, mortuary, branch funeral home, retail sales outlet, or crematory to inspect the premises or observe the training provided to apprentices. Acceptance of a permit constitutes permission for entry to the premises as provided in this section without legal process.

(C) No permit to operate a funeral establishment or crematory may be issued unless the funeral establishment or crematory has a manager when the establishment or crematory is open for any type of funeral business or activity. The board must be notified within thirty days upon the death, resignation, or incapacity of the manager of a funeral establishment or crematory as provided for in Regulation 57‑10(c) and may issue a temporary permit to another manager upon terms and conditions the board considers to be in the best interest of the community in which the establishment or crematory is located.

(D) An application for a funeral establishment, crematory, or retail sales outlet permit must be made on forms furnished by the board and must be filed with the board accompanied by a fee established by the board in regulation. All permits expire on June thirtieth of each odd‑numbered year.

(E) When more than one person proposes to engage in the operation of a funeral establishment or crematory as a partnership or a corporation, one of the partners or corporation officers must be a licensed funeral director or the corporation or partnership must employ a full‑time manager. No partner or corporate officer shall hold himself out through advertising or otherwise as being a licensee unless the person is licensed in accordance with this chapter.

HISTORY: 1998 Act No. 380, Section 1; 2002 Act No. 322, Section 7.

CROSS REFERENCES

Inspection guidelines, see S.C. Code of Regulations R. 57‑15.

Library References

Dead Bodies 1 to 6.

Licenses 11(1), 20, 22.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 11, 13, 22 to 26.

C.J.S. Licenses Sections 51, 53, 55, 62 to 66, 70 to 72.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Dead Bodies Section 21, Funerals.

S.C. Jur. Funeral Directors and Embalmers Section 4, License Qualifications.

Attorney General’s Opinions

Discussion of the provision of temporary permits for persons not licensed for one year or for persons who have not met the one year residency requirement. S.C. Op.Atty.Gen. (March 31, 2015) 2015 WL 1636657.

**SECTION 40‑19‑280.** Removal or embalming of body where information discloses death caused by crime or violence; notice to next‑of‑kin before body sent to funeral establishment; contract to pay insurance or benefits to funeral establishment; interference with public freedom of choice.

(A) No person licensed as a funeral director or embalmer shall remove or embalm a dead human body when the person has information indicating crime or violence of any sort in connection with the cause of death until permission first has been obtained from the coroner or medical examiner or some other qualified person acting in this capacity.

(B) No public officer or employee, the official of any public institution, physician, surgeon, or any other person having a professional relationship with a decedent may send or cause to be sent to a funeral establishment or to a person licensed for the practice of funeral service the remains of a deceased person without having first made due inquiry as to the desires of the next of kin and of the persons who may be chargeable with the funeral and expenses of the decedent, such as the 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. If any kin is found, authority and directions of the kin govern except in those instances where the deceased made prior arrangements in writing, such as the aforementioned Record of Emergency Data.

(C) No company, corporation, or association engaged in the business of paying or providing for the payment of the expenses of the funeral, disposition, or other similar expenses of the deceased members or of certificate holders, or engaged in the business of providing insurance upon the life of an individual, under which an obligation may arise to care for the remains of the insured, shall contract to pay or shall pay insurance or benefits, or part of insurance or benefits, to a funeral establishment, licensee, or individual in a manner which may deprive the representative, next of kin, or family of the deceased person from, or in any way control them in, procuring a funeral establishment, person licensed for the practice of funeral service, or other proper and competent person to perform funeral services and furnish supplies to care for the remains of the decedent.

(D) No person licensed as a funeral director or embalmer or anyone acting for a funeral director or embalmer shall have a part in a transaction or business which in any way interferes with the freedom of choice of the general public to choose a person licensed for the practice of funeral service or to choose a funeral establishment except where the body or a part of the body is given for anatomical purposes.

(E) It is unlawful for a person, partnership, corporation, or association who has not been licensed or registered as provided for in this chapter to transact, practice, or hold himself out as transacting or practicing funeral service or operating or maintaining a funeral establishment, crematory, or retail sales outlet within this State.

HISTORY: 1998 Act No. 380, Section 1; 2002 Act No. 322, Section 8; 2010 Act No. 221, Section 2, eff June 8, 2010.

Editor’s Note

Prior Laws:1955 (49) 550; 1962 Code Section 56‑673; 1983 Act No. 146, Section 1; 1976 Code Section 40‑19‑190.

Effect of Amendment

The 2010 amendment in subsection (B) added the end of the first sentence, relating to United States Department of Defense Record of Emergency, and in the second sentence, added the reference to Record of Emergency Data.

Library References

Dead Bodies 1 to 6.

Licenses 25, 40.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 11, 13, 22 to 26.

C.J.S. Licenses Sections 64, 77, 125 to 126.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Funeral Directors and Embalmers Section 7, Rights of Selection.

**SECTION 40‑19‑290.** Disclosure of expenses related to services and merchandise; statements regarding legal requirements; disposition of payments received; investigations.

(A) The personnel of a funeral establishment or crematory shall make every reasonable attempt to fulfill the desires of the deceased and persons making arrangements both as to services and merchandise, and a full disclosure of all its available services and merchandise must be made before selection of the casket. Before the arrangements are completed, the licensee of the funeral service firm shall disclose fully what is included in the funeral and identify other related expenses such as cemeteries and florists.

(B) Statements of legal requirements or statements relative to the conditions under which embalming is required or advisable must be complete and factual. Representations as to legal requirements for embalming, the use of a casket or other receptacle, and the necessity, if any, of an interment receptacle in connection with a funeral must be truthful, and all legal or cemetery interment requirements must be disclosed.

(C) A funeral service establishment, crematory, or retail sales outlet shall have a card or brochure with each piece of funeral merchandise stating the price of the merchandise.

(D) The funeral establishment or crematory shall provide to the persons making the arrangements, at the time the arrangements are completed and before the time of rendering the service, a written statement signed by a representative of the funeral home and by the person authorizing the services showing to the extent then known:

(1) the price of the service that the persons have selected and what is included in the service;

(2) the price of each of the supplemental items of service and merchandise requested;

(3) the amount involved for each of the items for which the funeral service firm shall advance monies as an accommodation to the family; and

(4) the method of payment.

(E) All payments received by any establishment licensed under this chapter for funeral merchandise being purchased must be placed in a trust account in a federally insured institution until the merchandise is delivered for use as provided in the contract in accordance with the sales agreement or in the physical possession of the purchaser. Upon its own initiative or upon receipt of a complaint, the South Carolina Department of Consumer Affairs shall undertake investigations; review the books, records, and accounts of any establishment licensed under this chapter; subpoena witnesses; require audits and reports; and conduct hearings to determine if payments are being received in violation of the provisions of Chapter 7, Title 32.

HISTORY: 1998 Act No. 380, Section 1; 2002 Act No. 322, Section 9; 2004 Act No. 188, Section 7; 2009 Act No. 70, Section 2.

Editor’s Note

Prior Laws:1983 Act No. 146, Section 1; 1976 Code Section 40‑19‑200.

CROSS REFERENCES

Preneed burial contracts, see Section 32‑7‑10 et seq.

Library References

Dead Bodies 1 to 6.

Licenses 25.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 11, 13, 22 to 26.

C.J.S. Licenses Sections 64, 77.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Dead Bodies Section 21, Funerals.

**SECTION 40‑19‑300.** Construction of chapter; limitations on authority of persons with fiduciary relationship with deceased; sale of burial vaults by operators of commercial cemeteries.

Nothing contained in this chapter may be construed to govern or limit the authority of an administrator or executor, trustee, or other person having a fiduciary relationship with the deceased. Further, nothing contained in this chapter may be construed to prohibit the sale of burial vaults by persons engaged in the business of operating a commercial cemetery.

HISTORY: 1998 Act No. 380, Section 1.

Library References

Dead Bodies 1 to 6.

Licenses 8(1), 25.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 11, 13, 22 to 26.

C.J.S. Licenses Sections 23 to 24, 64, 77.

**SECTION 40‑19‑310.** Chapter not applicable to preparation and burial of paupers and inmates of state institutions; effect of chapter on other board duties and responsibilities.

(A) The provisions of this chapter do not apply to the preparation and burial of dead bodies of paupers or of inmates of state institutions when the paupers or inmates are buried at the expense of the State.

(B) Nothing in this chapter alters the responsibilities of the board or limits the board in carrying out its duties and responsibilities as required in Chapters 7 and 8, Title 32.

HISTORY: 1998 Act No. 380, Section 1.

Editor’s Note

Prior Laws:1955 (49) 550; 1962 Code Section 56‑675; 1983 Act No. 146, Section 1; 1976 Code Section 40‑19‑240.

Library References

Dead Bodies 1 to 6.

Licenses 8(1), 25.

Westlaw Topic Nos. 116, 238.

C.J.S. Dead Bodies Sections 1 to 11, 13, 22 to 26.

C.J.S. Licenses Sections 23 to 24, 64, 77.

**SECTION 40‑19‑320.** Severability.

If a provision of this chapter or the application of a provision to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: 1998 Act No. 380, Section 1.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Funeral Directors and Embalmers Section 3, Licensing Authority.