~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

April 23, 2019

**H. 4256**

Introduced by Rep. Sandifer

S. Printed 4/23/19--H.

Read the first time March 19, 2019.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40‑19‑295 SO AS TO PROHIBIT THE DIVIDING OF FEES OR OTHER COMPENSATION CHARGED OR RECEIVED BY LICENSEES OF THE BOARD OF FUNERAL SERVICE WITH ANOTHER PERSON, PARTNERSHIP, CORPORATION, ASSOCIATION, OR LEGAL ENTITY FOR THE DELIVERY OR PERFORMANCE OF FUNERAL SERVICES; TO AMEND SECTION 32‑7‑100, RELATING TO PENALTIES FOR VIOLATIONS OF PROVISIONS REGULATING PRENEED FUNERAL CONTRACTS, SO AS TO INCREASE FINE RANGES AND PERMANENTLY BAR PERSONS CONVICTED OF A FELONY FROM CONDUCTING PRENEED CONTRACT SALES; TO AMEND SECTION 32‑7‑110, RELATING TO THE INVESTIGATION OF COMPLAINTS AGAINST UNLICENSED PRENEED CONTRACT SALES PROVIDERS, SO AS TO PROVIDE COMPLAINTS TO WHICH THE DEPARTMENT SHALL RESPOND MAY BE WRITTEN OR ORAL; TO AMEND SECTION 32‑8‑360, RELATING TO PENALTIES FOR VIOLATIONS OF THE SAFE CREMATION ACT, SO AS TO INCREASE MONETARY FINES AND REQUIRE IMMEDIATE REPORTING OF VIOLATIONS TO THE BOARD; TO AMEND SECTION 32‑8‑385, RELATING TO REQUIREMENTS THAT CREMATORIES EMPLOY CERTAIN TRAINED STAFF TO PERFORM CREMATIONS, SO AS TO REQUIRE ALL CREMATIONS BE PERFORMED BY THESE TRAINED STAFF MEMBERS; TO AMEND SECTION 40‑19‑10, RELATING TO THE COMPOSITION OF THE BOARD, SO AS TO REQUIRE SEVEN OF THE NINE LICENSEE MEMBERS BE APPOINTED ONE FROM EACH CONGRESSIONAL DISTRICT, AND TO PROVIDE FOR THE GRADUAL IMPLEMENTATION OF THIS PROVISION AS THE TERMS OF CURRENT MEMBERS EXPIRE ON A STAGGERED BASIS; TO AMEND SECTION 40‑19‑20, AS AMENDED, RELATING TO DEFINITIONS CONCERNING THE REGULATION OF EMBALMERS AND FUNERAL DIRECTORS, SO AS TO REVISE CERTAIN DEFINITIONS; TO AMEND SECTION 40‑19‑30, RELATING TO THE REQUIREMENT OF LICENSURE TO PRACTICE FUNERAL SERVICE, SO AS TO PROVIDE CONDUCT CONSTITUTING THE PRACTICE OF FUNERAL SERVICE INCLUDES PARTIES WHO EXERCISE ANY CONTROL OR AUTHORITY OVER A FUNERAL ESTABLISHMENT OR ITS EMPLOYEES, AGENTS, OR REPRESENTATIVES, AND TO PROHIBIT CORPORATIONS, PARTNERSHIPS, OR INDIVIDUALS IN WHOSE NAME APPEARS THE NAME OF A PERSON WITH A REVOKED OR LAPSED LICENSE FROM HAVING A LICENSE TO OPERATE A FUNERAL HOME; TO AMEND SECTION 40‑19‑70, RELATING TO POWERS AND DUTIES OF THE BOARD, SO AS TO PROVIDE BOARD MEMBERS, COMMITTEES, OR EMPLOYEES MAY NOT BE LIABLE FOR ACTS PERFORMED IN THE COURSE OF THEIR OFFICIAL DUTIES IN THE ABSENCE OF MALICE SHOWN AND PROVEN IN A COURT OF COMPETENT JURISDICTION; TO AMEND SECTION 40‑19‑80, RELATING TO INSPECTORS EMPLOYED BY THE BOARD, SO AS TO INSTEAD REQUIRE THE BOARD TO EMPLOY AT LEAST TWO INVESTIGATORS WHO MAY BE LICENSED EMBALMERS AND FUNERAL DIRECTORS WITH CERTAIN EXPERIENCE BUT WHO HAVE NOT BEEN DISCIPLINED; TO AMEND SECTION 40‑19‑110, AS AMENDED, RELATING TO CONDUCT CONSTITUTING UNPROFESSIONAL CONDUCT BY A LICENSEE OF THE BOARD, SO AS TO MAKE GRAMMATICAL CHANGES; TO AMEND SECTION 40‑19‑115, RELATING TO JURISDICTION OF THE BOARD, SO AS TO INCLUDE UNLICENSED PERSONS WITH THIS JURISDICTION; TO AMEND SECTION 40‑19‑200, RELATING TO PENALTIES FOR VIOLATIONS OF PROVISIONS PROHIBITING THE PRACTICE OF FUNERAL SERVICES WITHOUT A LICENSE OR USING FALSE INFORMATION TO OBTAIN SUCH LICENSURE, SO AS TO INCREASE MONETARY FINES, AND TO SUBJECT PERSONS WHO AID AND ABET UNLICENSED PERSONS OR ENTITIES IN ENGAGING IN THE PRACTICE OF FUNERAL SERVICE WITHOUT LICENSURE TO THESE PENALTIES; TO AMEND SECTION 40‑19‑250, RELATING TO CONTINUING EDUCATION PROGRAMS, SO AS TO REQUIRE CERTAIN COURSEWORK IN ETHICS, TO REQUIRE FOUR HOURS OF TOTAL ANNUAL COURSEWORK, TO REQUIRE A CERTAIN PORTION OF THIS COURSEWORK TO BE IN ETHICS, AND TO REQUIRE A CERTAIN PORTION OF THIS COURSEWORK BE COMPLETED IN PERSON; AND TO AMEND SECTION 40‑19‑290, RELATING TO THE FIDUCIARY RESPONSIBILITIES OF FUNERAL ESTABLISHMENTS WITH RESPECT TO PAYMENTS RECEIVED FOR FUNERAL MERCHANDISE BEING PURCHASED, SO AS TO PROVIDE THESE PAYMENTS MUST BE KEPT IN A TRUST ACCOUNT UNTIL THE MERCHANDISE IS DELIVERED FOR ITS INTENDED USE OR IS DELIVERED INTO THE PHYSICAL POSSESSION OF THE PURCHASER.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 19, Title 40 of the 1976 Code is amended by adding:

“Section 40‑19‑295. It is unlawful for a person, partnership, corporation, association, or legal entity to divide with or receive from, or to agree to divide with or receive from, a licensed funeral director or other licensee of the board, whether practicing in this State or elsewhere, any portion of a fee or any compensation charged or received by a licensed funeral director or other licensee under this chapter, or any other valuable consideration having been placed in the hands of a licensed funeral director, or in the hands of any unlicensed person involving either through the delivery of funeral services, or the performance of any funeral services or acts as set defined in this chapter.”

SECTION 2. Section 32‑7‑100(A) of the 1976 Code is amended to read:

“(A) A person wilfully violating the provisions of this chapter is guilty of a:

(1) misdemeanor, if the value of money obtained or sought to be obtained is ~~two~~ ten thousand dollars or less and, upon conviction or plea, the person must be fined not less than ~~one~~ five thousand dollars, or imprisoned for not more than ~~thirty days~~ six months, or both;

(2) ~~felony, if the value of money obtained or sought to be obtained is more than two thousand dollars but less than ten thousand dollars, and, upon conviction, the person must be fined in the discretion of the court, or imprisoned for not more than five years, or both;~~

~~(3)~~ felony, if the value of money obtained or sought to be obtained is more than ten thousand dollars ~~or more~~, and, upon conviction or plea, the person must be fined in the discretion of the court in an amount not less than twenty‑five thousand dollars, ~~or~~ imprisoned for not more than ten years, or both;

(~~4~~3) in addition, a person convicted of a misdemeanor ~~or a felony~~ pursuant to this section may be prohibited from entering into further preneed funeral contracts, if the department, in its discretion, finds that the offense is sufficiently grievous. A person convicted of a felony pursuant to this chapter or convicted of a felony under any other statute in this State is permanently banned from conducting preneed contract sales.”

SECTION 3. Section 32‑7‑110(B) of the 1976 Code is amended to read:

“(B)(1) Upon its own initiative or upon receipt of a verbal or written complaint, the department shall investigate a funeral home, funeral director, individual, or business the department has reason to believe is acting as a provider without a license. In order to conduct its investigation, the department shall review the books, records, and accounts of:

(~~1~~a) a funeral home or funeral director licensed by the State Board of Funeral Service even if the funeral home or funeral director is not licensed to sell preneed funeral contracts~~,~~; or

(~~2~~b) an individual or business the department has reason to believe is acting as a provider without a license. If the department discovers that a violation of this chapter has occurred by a funeral home, funeral director, individual, or business that is not licensed to sell preneed funeral contracts, the department may initiate an action for a violation of this chapter in the Administrative Law Court for a cease and desist order or assess an administrative fine not to exceed ten thousand dollars, or both.

(2) A person aggrieved by an order of the department may request a contested case hearing before the Administrative Law Court.”

SECTION 4. Section 32‑8‑360(B) of the 1976 Code is amended to read:

“(B) A person who violates a provision of this chapter is subject to a civil fine ~~not to exceed five~~ of not less than ten thousand dollars but not more than twenty‑five thousand dollars. A licensed funeral director or embalmer who violates a provision of this chapter must be reported to the State Board of Funeral Service for immediate investigation and disciplinary proceedings.”

SECTION 5. Section 32‑8‑385 of the 1976 Code is amended to read:

“Section 32‑8‑385. 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, and also 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. All cremations must be performed by a trained individual as provided in this section.”

SECTION 6. Section 40‑19‑10 of the 1976 Code is amended to read:

“Section 40‑19‑10. ~~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.~~

(A)(1) There is created the South Carolina State Board of Funeral Service consisting of eleven members appointed by the Governor as follows:

(a) one member appointed to Seat 1 who must be a licensed funeral director or embalmer from the First Congressional District to succeed a licensee member whose term expired in 2018, to serve until July 1, 2021, and until his successor is appointed and qualified, who thereafter shall serve three‑year terms and until their successors are appointed and qualified;

(b) one member appointed to Seat 2 who must be a licensed funeral director or embalmer from the Second Congressional District to succeed a licensee member whose term expired in 2018, to serve until July 1, 2021, and until his successor is appointed and qualified, who thereafter shall serve three‑year terms and until their successors are appointed and qualified;

(c) one member appointed to Seat 3 who must be a licensed funeral director or embalmer from the Third Congressional District to succeed a licensee member whose term expired in 2018, to serve until July 1, 2021, and until his successor is appointed and qualified, who thereafter shall serve three‑year terms and until their successors are appointed and qualified;

(d) one member appointed to Seat 4 who must be a licensed funeral director or embalmer from the Fourth Congressional District to succeed a licensee member whose term expired in 2019, to serve until July 1, 2022, and until his successor is appointed and qualified, who thereafter shall serve three‑year terms and until their successors are appointed and qualified;

(e) one member appointed to Seat 5 who must be a licensed funeral director or embalmer from the Fifth Congressional District to succeed a licensee member whose term expired in 2019, to serve until July 1, 2022, and until his successor is appointed and qualified, who thereafter shall serve three‑year terms and until their successors are appointed and qualified;

(f) one member appointed to Seat 6 who must be a licensed funeral director or embalmer from the Sixth Congressional District to succeed a licensee member whose term expired in 2019, to serve until July 1, 2022, and until his successor is appointed and qualified, who thereafter shall serve three‑year terms and until their successors are appointed and qualified;

(g) one member appointed to Seat 7 who must be a licensed funeral director or embalmer from the Seventh Congressional District to succeed a licensee member whose term expires in 2019, to serve until July 1, 2022, and until his successor is appointed and qualified, who thereafter shall serve three‑year terms and until their successors are appointed and qualified;

(h) one member appointed to Seat 8 who must be a licensed funeral director or embalmer to serve at large to succeed a licensee member whose term expires in 2020, to serve until July 1, 2023, and until his successor is appointed and qualified, who thereafter shall serve three‑year terms and until their successors are appointed and qualified;

(i) one member appointed to Seat 9 who must be a licensed funeral director or embalmer to serve at large to succeed a licensee member whose term expires in 2020, to serve until July 1, 2023, and until his successor is appointed and qualified, who thereafter shall serve three‑year terms and until their successors are appointed and qualified;

(j) one member appointed to Seat 10 who must represent the general public and serve at large to succeed a member representing the general public whose term expired in 2018, to serve until July 1, 2021, and until his successor is appointed and qualified, who thereafter shall serve three‑year terms and until their successors are appointed and qualified; and

(k) one member appointed to Seat 11 who must represent the general public and serve at large to succeed a member representing the general public whose term expires in 2020, to serve until July 1, 2023, and until his successor is appointed and qualified, who thereafter shall serve three‑year terms and until their successors are appointed and qualified.

(2) The members holding Seats 1, 2, 3, 4, 5, 6, 7, 8, and 9 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. The members holding Seats 10 and 11 must be members from the general public not connected with a funeral service establishment.

(3) All members must have been residents of this State for no fewer than five years preceding the date of their appointment.

(B) 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.

(C) 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.”

SECTION 7. Section 40‑19‑20(11) and (21) of the 1976 Code, as last amended by Act 135 of 2018, is further amended to read:

“(11) ‘Funeral director’ means a person licensed by the board to engage for hire, for direct or indirect compensation, or for profit ~~in~~ or benefit and in exchange for or related to the profession of arranging, directing, or supervising funerals.

(21) ‘Owner’ means a sole proprietor, partnership, limited partnership, corporation, limited liability corporation, or any business entity possessing authority ~~and~~ or control over a funeral establishment or its employees, agents, or representatives.”

SECTION 8. Section 40‑19‑30 of the 1976 Code is amended to read:

“Section 40‑19‑30. (A) 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.

(B) No permit to operate a funeral home may be issued to a corporation, partnership, or individual when the name of either an unlicensed person or a person whose license has been revoked or suspended 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.”

SECTION 9. Section 40‑19‑70 of the 1976 Code is amended to read:

“Section 40‑19‑70. 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. A member of the board, or its committees or employees, may not be liable for acts performed in the course of their official duties, except when actual malice is shown and proven in a court of competent jurisdiction in this State.”

SECTION 10. Section 40‑19‑80 of the 1976 Code is amended to read:

“Section 40‑19‑80. The board shall employ ~~an~~ at least one inspector and at least one investigator who must be a licensed embalmer and funeral director with not fewer than five consecutive years’ experience as a licensee under this chapter but who have not been disciplined during the time of their past or current licensure under this chapter.”

SECTION 11. Section 40‑19‑110(9) of the 1976 Code is amended to read:

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

SECTION 12. Section 40‑19‑115 of the 1976 Code is amended to read:

“Section 40‑19‑115. The board has jurisdiction over the actions of licensees, unlicensed persons, and former licensees as provided for in Section 40‑1‑115.”

SECTION 13. Section 40‑19‑200 of the 1976 Code is amended to read:

“Section 40‑19‑200. A person who practices or offers to practice funeral service or who aids and abets any unlicensed person or unlicensed entity to engage in the practice of 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~~ ten thousand dollars or more than ~~twenty‑five hundred~~ twenty thousand dollars ~~or~~, imprisoned for not more than six months, or both.”

SECTION 14. Section 40‑19‑250 of the 1976 Code is amended to read:

“Section 40‑19‑250. The board shall develop in regulation a continuing education program and each licensee must attend a minimum of ~~three~~ four credit hours annually, of which one credit hour must be an ethics in funeral service course. This continuing education program must be offered, at a minimum, four times a year at locations easily accessible to participants and three of the four required hours must be available through correspondence courses with at least two hours requiring the physical attendance of the licensee. 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~~ and is sixty years old or older.”

SECTION 15. Section 40‑19‑290(E) of the 1976 Code is amended to read:

“(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 its intended funeral service use as provided in the contract in accordance with the sales agreement or is delivered 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.”

SECTION 16. Section 40‑19‑20(12)(c) of the 1976 Code is amended to read:

“(c) a ~~room containing a displayed stock of at least six adult~~ means of showing photographs or other representations of available caskets and other necessary funeral supplies;”

SECTION 17. This act takes effect upon approval by the Governor.

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