**South Carolina General Assembly**

125th Session, 2023-2024

**H. 4116**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Sandifer, M.M. Smith and King

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Introduced in the House on March 9, 2023

Introduced in the Senate on April 6, 2023

Last Amended on March 20, 2024

Currently residing in conference committee

Summary: Funeral contracts

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 3/9/2023 House Introduced and read first time (House Journal‑page 12)

 3/9/2023 House Referred to Committee on **Labor, Commerce and Industry** (House Journal‑page 12)

 3/30/2023 House Committee report: Favorable with amendment **Labor, Commerce and Industry** (House Journal‑page 3)

 4/4/2023 Scrivener's error corrected

 4/5/2023 House Member(s) request name added as sponsor: King

 4/5/2023 House Amended

 4/5/2023 House Read second time

 4/5/2023 House Roll call Yeas-95 Nays-15

 4/5/2023 House Reconsider vote whereby read second time

 4/5/2023 House Amended (House Journal‑page 95)

 4/5/2023 House Read second time (House Journal‑page 95)

 4/5/2023 House Roll call Yeas-98 Nays-15 (House Journal‑page 110)

 4/6/2023 House Read third time and sent to Senate (House Journal‑page 24)

 4/6/2023 Senate Introduced and read first time (Senate Journal‑page 43)

 4/6/2023 Senate Referred to Committee on **Judiciary** (Senate Journal‑page 43)

 4/12/2023 Senate Recalled from Committee on **Judiciary** (Senate Journal‑page 6)

 4/13/2023 Senate Committed to Committee on **Labor, Commerce and Industry** (Senate Journal‑page 6)

 5/4/2023 Senate Committee report: Favorable with amendment **Labor, Commerce and Industry** (Senate Journal‑page 17)

 5/5/2023 Scrivener's error corrected

 2/28/2024 Senate Committee Amendment Adopted (Senate Journal‑page 28)

 2/28/2024 Senate Amended (Senate Journal‑page 28)

 2/28/2024 Senate Read second time (Senate Journal‑page 28)

 2/28/2024 Senate Roll call Ayes-42 Nays-1 (Senate Journal‑page 28)

 2/29/2024 Senate Read third time and returned to House with amendments (Senate Journal‑page 10)

 3/1/2024 Scrivener's error corrected

 3/20/2024 House Senate amendment amended (House Journal‑page 74)

 3/20/2024 House Returned to Senate with amendments (House Journal‑page 74)

 3/20/2024 House Roll call Yeas-76 Nays-22 (House Journal‑page 78)

 3/27/2024 Senate Non-concurrence in House amendment (Senate Journal‑page 28)

 3/28/2024 House House insists upon amendment and conference committee appointed Reps. Sandifer, MM Smith, King (House Journal‑page 2)

 4/2/2024 Senate Conference committee appointed Allen, Climer, Goldfinch (Senate Journal‑page 26)

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**VERSIONS OF THIS BILL**

[03/09/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/4116_20230309.docx)

[03/30/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/4116_20230330.docx)

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[02/28/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4116_20240228.docx)

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Indicates Matter Stricken

Indicates New Matter

Amended – Not Printed Bill for the House

Amt. No. 2A (lc-4116.hdb0032H)

March 20, 2024

H. 4116

Introduced by Reps. Sandifer, M. M. Smith and King

S. Printed 03/20/24--H.

Read the first time March 09, 2023

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A bill

TO AMEND THE south carolina CODE OF LAWS 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 SERVICEs WITH ANOTHER PERSON, PARTNERSHIP, CORPORATION, ASSOCIATION, OR LEGAL ENTITY FOR THE DELIVERY OR PERFORMANCE OF FUNERAL SERVICES; by AMENDing 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; by AMENDing 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; by AMENDing 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; by AMENDing 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; by AMENDing SECTION 40‑19‑20, RELATING TO DEFINITIONS CONCERNING THE REGULATION OF EMBALMERS AND FUNERAL DIRECTORS, SO AS TO REVISE CERTAIN DEFINITIONS; by AMENDing SECTION 40‑19‑30, RELATING TO THE REQUIREMENT OF LICENSURE TO PRACTICE FUNERAL SERVICEs, SO AS TO PROVIDE CONDUCT CONSTITUTING THE PRACTICE OF FUNERAL SERVICEs 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; by AMENDing 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; by AMENDing 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; by AMENDing SECTION 40‑19‑110, RELATING TO CONDUCT CONSTITUTING UNPROFESSIONAL CONDUCT BY A LICENSEE OF THE BOARD, SO AS TO MAKE GRAMMATICAL CHANGES; by AMENDing SECTION 40‑19‑115, RELATING TO JURISDICTION OF THE BOARD, SO AS TO INCLUDE UNLICENSED PERSONS WITH THIS JURISDICTION; by AMENDing 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; by AMENDing 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 by AMENDing 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 S.C. Code is amended by adding:

 Section 40‑19‑295. No licensee whose license has been suspended or revoked, or who has applied for a license but whose application has been denied, may participate in any manner in a business licensed by the board until that person has obtained a license or the person’s license has been restored. No business licensed by the board may permit or allow a person whose license has been suspended or revoked, or any person who has applied for a license but whose application has been denied, to participate in any manner in the business licensed by the board.

SECTION 2. Section 32‑‑100(A) of the S.C. 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 mustmay be fined not less than one five up to twenty-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 is subject to the following additional penalties when the value of the money obtained or sought to be obtained is:

 (a) twenty-five thousand dollars or less, upon conviction or plea, the person is subject to a two year suspension from conducting preneed funeral contract sales, and restitution as may be ordered by the court;

 (b) greater than twenty-five thousand dollars, but less than one hundred thousand dollars, upon conviction or plea, the person is subject to a five year suspension from conducting preneed funeral contract sales, and restitution as may be ordered by the court;

 (c) greater than one hundred thousand dollars, upon conviction or plea, the person is subject to a ten year suspension from conducting preneed funeral contract sales, and restitution as may be ordered by the court.

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

 (B)(1) Upon its own initiative or upon receipt of a 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 32-8-305(9) of the S.C. Code is amended to read:

 (9) “Cremation” means the technical process using either alkaline hydrolysis or heat and flame that reduces human remains to components of either liquid and bone, or bone fragments, and which may include the pulverization of the bone fragments.

SECTION 5. Section 32‑8‑360(B) of the S.C. 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 up to 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 6. Section 32‑8‑385 of the S.C. Code is amended to read:

 Section 32‑8‑385. (A) 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 of this section, this individual is considered to be sufficiently trained for the purposes of this chapter. All cremations must be performed by a trained individual who has registered with the board.

 (B) To be registered with the board, the individual must:

 (1) complete an application in the format prescribed by the board;

 (2) successfully complete a crematory operator training course approved by the board of not less than eight hours instructional time;

 (3) have not been convicted of or pled guilty to a crime that directly relates to the duties, responsibilities, or fitness of the occupation or profession; and

 (4) pay a fee as established in regulation not to exceed fifty dollars.

 (C) Registrations under this section must be renewed every two years by submitting a renewal application and paying a renewal fee established in regulation not to exceed fifty dollars.

 (D) Registered trained individuals are subject to applicable provisions of Sections 40-1-110, Chapter 19 of Title 40, Chapter 8 of Title 32, and board regulations.

SECTION 7. Section 40‑19‑20(11) and (21) of the S.C. Code is 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 S.C. 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 is 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 S.C. 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 gross negligence is shown and proven in a court of competent jurisdiction in this State.

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

 Section 40‑19‑80. The board shall employ an inspector at least two inspectors who must be a licensed embalmer embalmers and funeral directorfuneral directors with not no 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 S.C. 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.;The release must include payment for the actual services provided by the initial funeral home as transferor of the dead human body over to the receiving transferee. The receiving transferee funeral home is responsible for the payment to the transferring funeral home at the time of the transfer of the dead human body;

SECTION 12. Section 40‑19‑115 of the S.C. 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 S.C. 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, mustmay be fined not less than five hundred ten thousand dollars or more than twenty‑five hundred twenty‑five thousand up to twenty-five thousand dollars or imprisoned for not more than six months, or both.

SECTION 14. Section 40-19-230(A) and (B) of the S.C. Code is amended to read:

 Section 40-19-230. (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 turpitudeor pled guilty to a crime that directly relates to the duties, responsibilities, or fitness of the occupation or profession;

 (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 turpitudeor pled guilty to a crime that directly relates to the duties, responsibilities, or fitness of the occupation or profession;

 (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.

SECTION 15. Section 40‑19‑250 of the S.C. 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 threeThree of the four required hours must be available through correspondence courses, with at least two of the four 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 16. Section 40-19-265 of the S.C. Code is amended to read:

 Section 40-19-265. (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 seventy-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 seventy-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 seventy-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.

SECTION 17. Section 40-19-20(6) and (7) of the S.C. Code is amended to read:

 (6) “Cremation” means the reduction of the dead body by intense heat to residuethe technical process using either alkaline hydrolysis or heat and flame that reduces human remains to components of either liquid and bone, or bone fragments, and which may include the pulverization of the bone fragments.

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

SECTION 18. Section 40‑19‑290(E) of the S.C. Code is amended to read:

 (E) Other than payments received for at-need funeral merchandise and funeral services, 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 services use as provided in the contract and 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.

SECTION 19. Section 40‑19‑20(12)(c) of the S.C. 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 20. This act takes effect July 1, 2024.

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