

**FUNERAL BOARD LAWS
AS OF THE 2019 LEGISLATIVE SESSION**

**TITLE 37, CHAPTER 19
MORTICIANS AND FUNERAL SERVICES**

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CHAPTER 19 MORTICIANS AND FUNERAL SERVICES

Chapter Cross-References

Cadavers and autopsies, Title 50, ch. 21.

Chapter Administrative Rules

Title 24, chapter 147, ARM Board of Funeral Service.

Chapter Law Review Articles

Funeral and Cemetery Trusts and Audit Liability, Wright, 139 Tr. & Est. 12 (2000).

Preneed Funeral Plans: The Case for Uniformity, Frank, 4 Elder L.J. 1 (1996).

Improving the Image and Legal Status of the Burial Services Industry, Moore, 24 Akron L. Rev. 565 (1991).

Part 1 General

37-19-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Arrangements" includes:
 - (a) planning the details of funeral service, including time of service, type of service, and, if requested, acquiring the services of clergy;
 - (b) obtaining the necessary information for filing death certificates;
 - (c) comparing or discussing prices, including merchandise prices and financial arrangements; and
 - (d) providing for onsite direction and coordination of participants and onsite direction, coordination, and facilitation at funeral, graveside, or memorial services or rites.
- (2) "At-need arrangements" means arrangements made by an authorized person on behalf of a deceased.
- (3) "Authorizing agent" means a person legally entitled to order the final disposition of human remains, including burial, cremation, entombment, donation to medical science, or other means. The order of preference for an authorizing agent is subject to the priority of rights of disposition established in 37-19-904.
- (4) "Board" means the board of funeral service provided for in 2-15-1743.
- (5) "Branch establishment" means a separate facility that may or may not have a suitable visitation room or preparation room and that is owned by, a subsidiary of, or otherwise financially connected to or controlled by a licensed mortuary.
- (6) "Cemetery" means any land or structure in this state dedicated to and used or intended to be used for interment of cremated remains or human remains. It may be any one or a combination of a burial park for earth interments, a mausoleum for crypt or niche interments, or a columbarium.
- (7) "Cemetery company" means an individual, partnership, corporation, or association that:
 - (a) owns or controls cemetery lands or property and conducts the business of a cemetery; or
 - (b) applies to the board to own or control cemetery lands or property and conduct the business of a cemetery.
- (8) "Closed container" means a container in which cremated remains can be placed and enclosed in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.
- (9) "Columbarium" means a room or space in a building or structure used or intended to be used for the interment of cremated remains.
- (10) "Cremated remains" means all human remains recovered after the completion of the cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.

(11) "Cremation" means the technical process, using heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation.

(12) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the cremation of human remains.

(13) "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet substantially all of the following standards:

- (a) be composed of readily combustible materials suitable for cremation;
- (b) be able to be closed in order to provide a complete covering for the human remains;
- (c) be resistant to leakage and spillage;
- (d) be rigid enough for handling with ease; and
- (e) be able to provide protection for the health, safety, and integrity of crematory personnel.

(14) "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.

(15) "Crematory operator" means the person in charge of the licensed crematory facility.

(16) "Crematory technician" means an employee of a crematory facility who is trained to perform cremations and is licensed by the board.

(17) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.

(18) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(19) "Embalming" means:

(a) obtaining burial or removal permits or assuming other duties incidental to the practice of embalming;

(b) disinfecting and preserving or attempting to preserve dead human bodies in their entirety or in parts by the use of chemical substances, fluids, or gases ordinarily intended for that use by introducing the chemical substances, fluids, or gases into the body by vascular or hypodermic injection or by direct introduction into the organs or cavities; and

(c) restorative art.

(20) "Funeral directing" includes:

- (a) supervising funerals;
- (b) the making of preneed or at-need contractual arrangements for funerals;
- (c) preparing dead bodies for burial, other than by embalming;
- (d) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and
- (e) representing to the public that one is a funeral director.

(21) "Holding facility" means an area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that must:

- (a) comply with any applicable public health law;
- (b) preserve the dignity of the human remains;
- (c) recognize the health, safety, and integrity of the crematory operator and crematory personnel;

and

(d) be secure from access by anyone other than authorized personnel.

(22) "Human remains" means the body of a deceased person or part of a body or limb that has been removed from a living person, including the body, part of a body, or limb in any stage of decomposition.

(23) "Interment" means any lawful disposition of cremated remains or human remains.

(24) (a) "Intern" means a person who has met the educational and testing requirements for a license to practice mortuary science in Montana, has been licensed by the board as an intern, and is engaged in the practice of mortuary science under the supervision of a licensed mortician.

(b) For the purposes of this subsection (24), "supervision" means the extent of oversight that a mortician believes an intern requires based on the training, experience, judgment, and professional development of the intern.

(25) "Lot" or "grave space" means a space in a cemetery used or intended to be used for interment.

(26) "Mausoleum" means a community-type room or space in a building or structure used or intended to be used for the interment of human remains in crypts or niches.

(27) "Mortician" means a person licensed under this chapter to practice mortuary science.

(28) (a) "Mortuary" means a place of business licensed by the board, located in a building or portion of a building having a specific street address or location, containing but not limited to a suitable room for viewing or visitation and a preparation room, and devoted exclusively to activities that are related to the preparation and arrangements for funerals, transportation, burial, or other disposition of dead human bodies.

(b) The term includes conducting activities from the place of business referred to in subsection (28)(a) that are incidental, convenient, or related to the preparation of funeral or memorial services or rites or the transportation, burial, cremation, or other disposition of dead human bodies in any area where those activities may be conducted.

(29) "Mortuary science" means the profession or practice of funeral directing and embalming.

(30) "Niche" means a space in a columbarium or mausoleum used or intended to be used for the interment of the cremated remains or human remains of one or more deceased persons.

(31) "Perpetual care and maintenance" means continual and proper maintenance of cemetery buildings, grounds, and lots or grave spaces.

(32) "Preneed arrangements" means arrangements made with a licensed mortician by a person on the person's own behalf or by an authorized individual on the person's behalf prior to the death of the person.

(33) "Temporary container" means a receptacle for cremated remains that is usually made of cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

(34) "Urn" means a receptacle designed to permanently encase the cremated remains.

History: En. Sec. 1, Ch. 41, L. 1963; amd. Sec. 260, Ch. 350, L. 1974; R.C.M. 1947, 66-2701; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 298, L. 1989; amd. Sec. 3, Ch. 38, L. 1993; amd. Sec. 2, Ch. 52, L. 1997; amd. Sec. 1, Ch. 336, L. 1999; amd. Sec. 128, Ch. 483, L. 2001; amd. Sec. 40, Ch. 126, L. 2005; amd. Sec. 11, Ch. 208, L. 2009; amd. Sec. 3, Ch. 49, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 49 in definition of preneed arrangements before "licensed mortician" deleted reference to licensed funeral director; and made minor changes in style. Amendment effective October 1, 2019.

2009 Amendment: Chapter 208 in definition of authorizing agent in second sentence after "preference" inserted "for an authorizing agent is subject to the priority of rights of disposition established in 37-19-904" and deleted former (a) through (e) that read: "(a) a spouse;

(b) a majority of adult children;

(c) a parent;

(d) a close relative of the deceased; or

(e) in the absence of a person or persons listed in subsections (1)(a) through (1)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by board rule"; and made minor changes in style. Amendment effective October 1, 2009.

2005 Amendment: Chapter 126 in definition of arrangements in (b) at end after "certificates" deleted "and obtaining burial-transit permits". Amendment effective July 1, 2005.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

1999 Amendment: Chapter 336 inserted definitions of arrangements, at-need, branch establishment, intern, and preneed arrangements; in definition of authorizing agent after "order" substituted "the final disposition, including burial, cremation, entombment, donation to medical science, or other means" for "the cremation"; substituted definition of embalming for former language that read: "means the preservation and disinfection of the dead human body by application of chemicals, externally, internally, or both"; substituted definition of mortuary for former language that read: "means the place of business used for the care and preparation for burial or transportation of dead human bodies or a place where a person represents that the person is engaged in the profession of mortuary science or funeral directing"; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 52 inserted definitions of cemetery, cemetery company, columbarium, crypt, interment, lot or grave space, mausoleum, niche, and perpetual care and maintenance; and made minor changes in style.

1993 Amendment: Chapter 38 inserted definitions of authorizing agent, closed container, cremated remains, cremation, cremation chamber, cremation container, crematory, crematory operator, crematory technician, holding facility, human remains, temporary container, and urn, in definition of Board substituted "funeral service" for "morticians", and at end of definition of funeral directing deleted "or undertaker"; and made minor changes in style. Amendment effective February 10, 1993.

1989 Amendment: In (4)(a) inserted "including the making of preneed or at-need contractual arrangements for funerals". Amendment effective March 24, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 298, L. 1989, provided: "A statement of intent is required for this bill because it grants authority to the board of morticians to adopt rules for:

(1) the imposition of fines in disciplinary actions for unprofessional conduct. Fines may be levied for any conduct for which a mortician's or funeral director's license could be revoked or suspended.

(2) the setting of standards for operating mortuary facilities to assure adherence to sanitary and safety provisions;

(3) the collection of fees and charges for mortuaries, which fees or charges must be commensurate with costs incurred for the services; and

(4) the establishment of reasonable application forms for operation of a new mortuary and transfer fees required to allow the transfer of a license to a new facility."

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

Administrative Rules

ARM 24.147.302 Funeral service definitions.

Part 2 Board of Funeral Service

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1743.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Disrupting meeting as disorderly conduct, 45-8-101.

Part Administrative Rules

Title 24, chapter 147, subchapter 1, ARM Organizational rule.

Title 24, chapter 147, subchapter 2, ARM Procedural rules.

37-19-201. Organization — compensation and expenses of members. The board shall elect a presiding officer, secretary-treasurer, and other necessary officers. Board members are entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 3, Ch. 41, L. 1963; amd. Sec. 262, Ch. 350, L. 1974; amd. Sec. 42, Ch. 439, L. 1975; amd. Sec. 4, Ch. 531, L. 1977; R.C.M. 1947, 66-2703; amd. Sec. 23, Ch. 474, L. 1981; amd. Sec. 1386, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1981 Amendment: Substituted the second sentence providing that Board members are entitled to compensation and travel expenses as provided in 37-1-133 for "Board members may serve for a compensation of \$25 per day for attending board meetings and shall be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, connected with attending meetings or in the discharge of other board duties".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

37-19-202. Meetings — rulemaking power. The board shall hold meetings as may be necessary. The board may adopt and enforce rules to carry out the purposes of this chapter.

History: En. Sec. 4, Ch. 41, L. 1963; R.C.M. 1947, 66-2704; amd. Sec. 27, Ch. 492, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 492 deleted former second sentence that read: "Three members constitute a quorum for the transaction of business"; and made minor changes in style. Amendment effective October 1, 2001.

Administrative Rules

Title 24, chapter 147, ARM Board of Funeral Service.

37-19-203. Terminated. Sec. 6, Ch. 380, L. 2015.

History: En. Sec. 1, Ch. 380, L. 2015.

Part 3 Licensing of Morticians

Part Cross-References

- Licensing to follow contested case procedure, 2-4-631.
- Duty of Department to administer and grade examinations, 37-1-101.
- Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
- Licensing boards to establish fees commensurate with costs, 37-1-134.
- Licensing investigation and review — record access, 37-1-135.
- Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
- Licensure of criminal offenders, Title 37, ch. 1, part 2.
- Nondiscrimination in licensing, 49-3-204.

Part Administrative Rules

- Title 24, chapter 147, subchapter 4, ARM Substantive rules.
- Title 24, chapter 147, subchapter 5, ARM Licensing.
- Title 24, chapter 147, subchapter 9, ARM Mortuary requirements.
- Title 24, chapter 147, subchapter 13, ARM Cemetery regulation rules.
- Title 24, chapter 147, subchapter 21, ARM Continuing education rules.
- Title 24, chapter 147, subchapter 23, ARM Unprofessional conduct.

37-19-301. Repealed. Sec. 14, Ch. 49, L. 2019.

History: En. Sec. 7, Ch. 41, L. 1963; amd. Sec. 264, Ch. 350, L. 1974; amd. Sec. 11, Ch. 215, L. 1975; R.C.M. 1947, 66-2707; amd. Sec. 47, Ch. 345, L. 1981; amd. Sec. 69, Ch. 429, L. 1995; amd. Sec. 24, Ch. 492, L. 1997.

37-19-302. License required for practice of mortuary science — qualifications of applicants. (1)
The practice of mortuary science is limited to:

- (a) licensed morticians;
 - (b) licensed interns; and
 - (c) students exempted under 37-19-308.
- (2) A person 18 years of age or older wishing to practice mortuary science in this state must apply to the board on the form and in the manner prescribed by the board.
- (3) To qualify for a mortician's license, a person must:
- (a) be of good moral character;

(b) have graduated from an accredited college or university with an associate degree in mortuary science;

(c) pass an examination prescribed by the board and pay the application fee set by the board by rule; and

(d) serve a 1-year internship under the supervision of a licensed mortician in a licensed mortuary after passing the examination provided for in subsection (3)(c).

(4) A person who fails the examination required in subsection (3)(c) may retake the examination under conditions prescribed by rule of the board.

History: En. Sec. 8, Ch. 41, L. 1963; amd. Sec. 9, Ch. 168, L. 1971; amd. Sec. 265, Ch. 350, L. 1974; R.C.M. 1947, 66-2708; amd. Sec. 4, Ch. 378, L. 1981; amd. Sec. 1, Ch. 510, L. 1985; amd. Sec. 22, Ch. 224, L. 2003; amd. Sec. 1, Ch. 34, L. 2015; amd. Sec. 1, Ch. 46, L. 2019; amd. Sec. 4, Ch. 49, L. 2019.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 46 deleted former (2)(c) that read: "(c) have earned in subjects prescribed by the board an additional 30 semester or 45 quarter credits from an accredited college or university that have not been applied toward the requirements in subsection (2)(b)"; and made minor changes in style. Amendment effective March 7, 2019.

Chapter 49 in (1) substituted current text restricting the practice of mortuary science for former text that read: "The practice of embalming or mortuary science by anyone who does not hold a mortician's license issued by the board is prohibited"; in (3)(c) after "prescribed by the board" inserted "and pay the application fee set by the board by rule"; and made minor changes in style. Amendment effective October 1, 2019.

2015 Amendment: Chapter 34 in (2)(b) substituted current text concerning associate degree for "present evidence of having satisfactorily completed 90 quarter credits or the equivalent of study at an accredited college or university"; and in (2)(c) substituted current text concerning additional credits for "in addition to the 90 quarter credits or the equivalent of study required in subsection (2)(b), have graduated with a diploma from an accredited college of mortuary science". Amendment effective October 1, 2015.

2003 Amendment: Chapter 224 in (1)(e) after "mortuary" deleted "in Montana". Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

1985 Amendment: In first sentence of (1) substituted "board" for "department", and inserted last sentence of (1) requiring person 18 or older to apply; at beginning of (2)(b) substituted "present evidence of having satisfactorily completed 90 quarter credits or the equivalent of study" for "have graduated from an accredited college of mortuary science and have satisfactorily completed 2 academic years" and at end of (2)(b) deleted "or have experience considered equivalent by the board"; inserted (2)(c) requiring an applicant to have graduated from an accredited college of mortuary science; in (2)(e) before "mortician" inserted "licensed" and at end inserted "after passing the examination provided for in subsection (2)(d)"; and inserted (3) allowing applicant who fails examination to retake it.

Severability: Section 5, Ch. 510, L. 1985, was a severability section.

Statement of Intent: The statement of intent attached to Ch. 510, L. 1985, provided: "It is the intent of the legislature by this bill that the board of morticians be delegated authority to adopt rules to:

(1) determine under what conditions unsuccessful applicants for licenses to practice mortuary science may retake the appropriate examination;

(2) grant special consideration as to recognition of internship qualifications in hardship cases; and

(3) define "unprofessional conduct" for license disciplinary purposes."

1981 Amendment: Added "or have experience considered equivalent by the board" at the end of (2).

Administrative Rules

ARM 24.147.507 Mortician licenses.

ARM 24.147.509 Examinations.

37-19-303. Mortician's license — renewals — fees. A person licensed to practice mortuary science under a mortician's license may renew the license on payment of the renewal license fee set by the board by rule.

History: En. Sec. 9, Ch. 41, L. 1963; amd. Sec. 266, Ch. 350, L. 1974; amd. Sec. 12, Ch. 215, L. 1975; R.C.M. 1947, 66-2709; amd. Sec. 48, Ch. 345, L. 1981; amd. Sec. 23, Ch. 224, L. 2003; amd. Sec. 5, Ch. 49, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 49 substituted current text concerning renewal of mortician's license for former text that read: "A person possessing the necessary qualifications may apply to the department for a license and on payment of an application fee, as set by the board, may take the examination prescribed by the board." Amendment effective October 1, 2019.

2003 Amendment: Chapter 224 deleted former second sentence that read: "The examination shall be held on the second Wednesday of July each year in Helena and at such other times and places as the board considers necessary." Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

1981 Amendment: Deleted "but not to exceed \$75" after "fee, as set by the board" in the middle of the first sentence.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.147.401 Fee schedule.

ARM 24.147.507 Mortician licenses.

ARM 24.147.509 Examinations.

37-19-304. Issuance of intern's license — license fee — issuance of mortician's license on completion of internship. An applicant who passes the examination provided for in 37-19-302 shall, upon payment of a license fee prescribed by the board, be granted an intern mortician's license to practice mortuary science under the supervision of a licensed mortician in a licensed mortuary in Montana and, upon completion of 1 year's internship and payment of the license fee, may apply for and receive a mortician's license.

History: En. Sec. 10, Ch. 41, L. 1963; R.C.M. 1947, 66-2710; amd. Sec. 49, Ch. 345, L. 1981; amd. Sec. 2, Ch. 510, L. 1985; amd. Sec. 25, Ch. 492, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 492 near end, after "payment of the", deleted "annual". Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and

Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1985 Amendment: Near beginning of section, after "examination", inserted "provided for in 37-19-302"; before "mortician" inserted "licensed".

Severability: Section 5, Ch. 510, L. 1985, was a severability section.

1981 Amendment: Substituted "a license fee prescribed by the board" for "a license fee of \$3" near the beginning of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.147.401 Fee schedule.

ARM 24.147.504 Internship.

37-19-305. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 12, Ch. 41, L. 1963; R.C.M. 1947, 66-2712; amd. Sec. 5, Ch. 378, L. 1981.

37-19-306. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 11, Ch. 41, L. 1963; amd. Sec. 267, Ch. 350, L. 1974; amd. Sec. 13, Ch. 215, L. 1975; R.C.M. 1974, 66-2711; amd. Sec. 50, Ch. 345, L. 1981; amd. Sec. 70, Ch. 429, L. 1995; amd. Sec. 26, Ch. 492, L. 1997; amd. Sec. 27, Ch. 271, L. 2003.

37-19-307. Deposit of money received. Money collected by the department under this chapter shall be deposited for the use of the board, subject to 37-1-101(6).

History: En. Sec. 6, Ch. 41, L. 1963; amd. Sec. 263, Ch. 350, L. 1974; R.C.M. 1947, 66-2706.

37-19-308. Student exemption — rulemaking. (1) A student currently enrolled in an accredited or approved funeral service or mortuary science degree program may engage in the practice of mortuary science without a license under this chapter if practicing:

(a) as part of a required student clinical practicum associated with the educational program; and

(b) under the supervision of a licensed mortician who operates from a licensed mortuary or branch establishment.

(2) The board may adopt rules pertaining to the requirements for supervision and for mortuary and branch establishments. The rules must be limited to implementing only the purposes outlined in subsection (1).

History: En. Sec. 1, Ch. 49, L. 2019.

Compiler's Comments

Effective Date: This section is effective October 1, 2019.

37-19-309 and 37-19-310 reserved.

37-19-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 14, Ch. 41, L. 1963; R.C.M. 1947, 66-2714; amd. Sec. 6, Ch. 378, L. 1981; amd. Sec. 3, Ch. 510, L. 1985; amd. Sec. 2, Ch. 298, L. 1989.

37-19-312. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 15, Ch. 41, L. 1963; amd. Sec. 268, Ch. 350, L. 1974; R.C.M. 1947, 66-2715.

37-19-313 and 37-19-314 reserved.

37-19-315. Funeral costs — rules on disclosure. The board shall adopt rules requiring mortuaries to disclose in writing to all customers a complete itemized list of all funeral costs and complete information regarding the need for embalming.

History: En. Sec. 7, Ch. 378, L. 1981.

Compiler's Comments

Statement of Intent: The statement of intent attached to SB 398 (Ch. 378, L. 1981) provided: "A Statement of Intent is required for this bill because it delegates rulemaking authority to the Board of Morticians in sections 7 and 8.

It is the intent of this bill that the board adopt rules requiring mortuaries to disclose in writing to all customers a complete itemized list of all funeral costs and complete information regarding the need for embalming. Members of the public seeking the services of mortuaries are usually under a great deal of personal stress, and the rules adopted are intended to provide complete disclosure of costs and attendant legal requirements to protect the economic interest of members of the public.

This bill grants the board the authority to establish continuing education programs and requirements to insure maintenance of professional knowledge and competency of licensees. It is the intent of the Legislature that the continuing education programs have as their primary objective the protection of the health, safety, and welfare of the public, and that the programs not serve primarily to limit entry into the profession or occupation or to promote the personal interests of the licensees."

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Administrative Rules

Title 24, chapter 147, subchapter 9, ARM Mortuary requirements.

37-19-316. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 378, L. 1981.

Part 4 Licensing of Mortuaries

Part Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 298, L. 1989, provided: "A statement of intent is required for this bill because it grants authority to the board of morticians to adopt rules for:

(1) the imposition of fines in disciplinary actions for unprofessional conduct. Fines may be levied for any conduct for which a mortician's or funeral director's license could be revoked or suspended.

(2) the setting of standards for operating mortuary facilities to assure adherence to sanitary and safety provisions;

(3) the collection of fees and charges for mortuaries, which fees or charges must be commensurate with costs incurred for the services; and

(4) the establishment of reasonable application forms for operation of a new mortuary and transfer fees required to allow the transfer of a license to a new facility."

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Licensing to follow contested case procedure, 2-4-631.

Prohibited relations with mortuaries, 33-18-301.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-19-401. License required — display of license. An operating mortuary must be licensed by the board. The license must be displayed in a conspicuous place.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(part); amd. Sec. 3, Ch. 298, L. 1989; amd. Sec. 71, Ch. 429, L. 1995; amd. Sec. 59, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (2) and (3) that read: "(2) A mortuary license expires on the date set by department rule and may be renewed upon payment of a fee set by the board.

(3) The board may set a penalty for late renewal of a mortuary license"; and made minor changes in style. Amendment effective July 1, 2005.

1995 Amendment: Chapter 429 in (2), after "expires", substituted "on the date set by department rule" for "on June 30 of each year".

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1989 Amendment: Inserted (2) providing for a license expiration date and a renewal fee; and inserted (3) allowing a late renewal penalty. Amendment effective March 24, 1989.

37-19-402. Operator's license requirements — facility inspections — transfer of license to new facility. (1) The operation of a mortuary is prohibited by anyone not holding a mortician's license.

(2) A license to operate a new mortuary facility in Montana may be issued only if the proposed mortuary facility meets standards for operating mortuaries adopted by the board.

(3) (a) An applicant for a license to operate a new mortuary shall send to the department a written and verified application on a form prescribed by the board. The application must be accompanied by an initial inspection fee.

(b) The department shall inspect the proposed new mortuary and report its findings to the board.

(4) The board shall grant a license if the department determines that the proposed new facility meets the standards adopted by the board and will be operated by a person who has been issued a mortician's license.

(5) The board may grant a temporary license to a mortuary until the initial inspection is completed.

(6) A mortuary license may be transferred from one facility to another only when the proprietor of a licensed facility terminates services at the licensed facility and commences services at a new facility. The new facility must be inspected and must meet standards for operating mortuaries.

(7) A mortuary may be inspected by members of the board or their representatives during business hours.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(4); amd. Sec. 4, Ch. 298, L. 1989; amd. Sec. 6, Ch. 49, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 49 in (1) and (4) substituted references to mortician's license for references to mortician's or funeral director's license; and made minor changes in style. Amendment effective October 1, 2019.

1989 Amendment: Inserted (2) through (4) relating to licensure of new mortuary facilities; inserted (5) allowing temporary licensure pending inspection; inserted (6) regarding transfer of a mortuary license; and inserted (7) relating to mortuary inspection during business hours. Amendment effective March 24, 1989.

Administrative Rules

ARM 24.147.401 Fee schedule.

ARM 24.147.407 Name change, closure, transfer, or sale — mortuary, branch establishment, crematory, or cemetery.

37-19-403. Power of board to set facility standards — inspection — fees. (1) The board may adopt rules prescribing reasonable standards for operating mortuaries, including minimum requirements for drainage, ventilation, and instruments. The board may inspect the premises of a mortuary establishment to determine if rules are complied with. Inspections are at the discretion of the board and may be without notice. An initial inspection is mandatory.

(2) The board may charge the operator an inspection fee, including an initial inspection fee, to be set at the discretion of the board. Fees must be commensurate with costs.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(part); amd. Sec. 51, Ch. 345, L. 1981; amd. Sec. 5, Ch. 298, L. 1989.

Compiler's Comments

1989 Amendment: At end of (1) inserted "An initial inspection is mandatory"; in (2), after "inspection fee", inserted "including an initial inspection fee" and at end inserted "Fees must be commensurate with costs"; and made minor changes in phraseology. Amendment effective March 24, 1989.

1981 Amendment: Deleted "but not to exceed \$25 per year" after "fee to be set at the discretion of the board" at the end of (2).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.147.401 Fee schedule.

ARM 24.147.403 Inspections.

Title 24, chapter 147, subchapter 9, ARM Mortuary requirements.

37-19-404. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(3); amd. Sec. 6, Ch. 298, L. 1989.

Part 5 Remedies for Violation

37-19-501. Penalty provision. A person who violates this chapter is guilty of a misdemeanor.

History: En. Sec. 17, Ch. 41, L. 1963; R.C.M. 1947, 66-2717.

Cross-References

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

Misdemeanor penalty when none specified, 46-18-212.

Part 6 reserved

Part 7 Licensing of Crematoriums, Crematory Operators, and Crematory Technicians

Part Compiler's Comments

Effective Date: Section 25, Ch. 38, L. 1993, provided: "[This act] [37-19-701 through 37-19-708] is effective on passage and approval." Approved February 10, 1993.

Part Administrative Rules

Title 24, chapter 147, subchapter 11, ARM Crematory rules.

37-19-701. Purpose. The legislature finds that because the practice of crematory operation affects the lives of the people of this state and because some Montanans may exercise their right to choose cremation for themselves or a loved one, it is the purpose of this part to:

(1) provide standards for the licensing and regulation of crematoriums in order to protect the public health, safety, and welfare; and

(2) ensure the qualified and professional practice of crematory operation.

History: En. Sec. 1, Ch. 38, L. 1993.

37-19-702. Licenses required — display of licenses — renewal — penalty for late renewal. (1) A person doing business in this state or a cemetery, mortuary, corporation, partnership, joint venture, voluntary organization, or other entity that erects, maintains, or provides the necessary appliances and facilities for the cremation of human remains and that conducts cremations must be licensed by the board. The license must be displayed in a conspicuous place in the crematory facility.

(2) A crematory license expires on the date set by department rule and may be renewed upon payment of a fee set by the board. The fee must include the cost of annual inspection. If a crematory facility is attached to a licensed mortuary, only one inspection fee may be charged for inspection of both a mortuary facility under 37-19-403 and a crematory facility.

(3) A person in charge of a licensed crematory facility must be licensed as a crematory operator by the board. A person employed by a licensed crematory facility must be licensed as a crematory technician by the board. The license must be displayed in a conspicuous place in the crematory facility.

(4) Crematory operator and crematory technician licenses expire on the date set by department rule and may be renewed upon payment of a fee set by the board. On-the-job training must be provided to a crematory technician at the time of employment.

History: En. Sec. 4, Ch. 38, L. 1993; amd. Sec. 72, Ch. 429, L. 1995; amd. Sec. 60, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 in (1) at end of first sentence after "board" deleted "beginning July 1, 1993"; deleted former (3) that read: "(3) The board may set a penalty fee for late renewal of a license"; and made minor changes in style. Amendment effective July 1, 2005.

1995 Amendment: Chapter 429 in first sentence of (2) and (5) substituted "on the date set by department rule" for "on June 30 of each year".

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Administrative Rules

ARM 24.147.1114 Licensure as crematory operator.

ARM 24.147.1115 Licensure as crematory technician.

37-19-703. Application — power of board to set standards — inspection — fees. (1) Application for a crematory, crematory operator, or crematory technician license must be on forms prescribed by the board and must include the name of the applicant, name of the crematory facility, location of the crematory facility and its mailing address, and any further information the board requires. To be eligible for licensure:

(a) as a crematory facility, an application must include a description of the type of structure and equipment to be used in the operation of the crematory facility;

(b) as a crematory operator, an applicant must be at least 18 years of age, must be a high school graduate or have an equivalent degree, and must be of good moral character.

(2) The application must be accompanied by an application fee set by the board.

(3) The board must be notified of any change of ownership of a crematory within 30 days of the change.

(4) A license to operate a crematory in Montana may be issued only upon inspection of the crematory facility and upon a finding of compliance with standards for operation set by the board.

(5) A temporary permit may be issued to operate a crematory facility, as prescribed by board rule, that is effective until the initial inspection is completed to the board's satisfaction.

(6) A crematory facility may be inspected by a board member or the board's designated representative during business hours.

(7) The board shall adopt rules governing the cremation of human remains, the transportation of human remains, sanitation, equipment, fire protection, building construction, and recordkeeping.

(8) A crematory facility shall comply with all local building codes, environmental standards, and applicable state and local regulations.

(9) A new crematory facility shall pay an initial inspection fee, set by the board, that must accompany the application.

History: En. Sec. 5, Ch. 38, L. 1993.

Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 38, L. 1993, provided: "A statement of intent is required for this bill because [sections 4 through 10] [Title 37, ch. 19, part 7] grant rulemaking authority to the board of funeral service to implement provisions of this bill. It is the intent of the legislature that the board, at a minimum, adopt rules:

(1) establishing license application procedures, license fees, criteria for minimum requirements for license eligibility, and requirements for license renewal;

(2) developing procedures for the issuance, renewal, suspension, and revocation of licenses; and

(3) creating disciplinary standards for licensees, establishing investigatory procedures for processing complaints, and adopting ethical standards for licensed crematory operators."

37-19-704. Cremation authorization required — identification. (1) Except as otherwise provided in this chapter, a crematory may not cremate human remains until it has received a cremation authorization.

(2) A crematory may not accept unidentified human remains.

(3) Appropriate identification must be placed upon the exterior of the cremation container upon receipt of the human remains.

History: En. Sec. 6, Ch. 38, L. 1993.

37-19-705. Cremation procedures — cremation containers. (1) Human remains may not be cremated except in a licensed crematory.

(2) Human remains may not be cremated within 24 hours after the time of death.

(3) A body may not be cremated with a pacemaker or other potentially hazardous implant, as defined by the board, including any toxic or explosive-type sealed implants, in place. The authorizing agent is responsible for disclosing the existence of any pacemakers or other hazardous implants.

(4) A crematory shall hold human remains, prior to their cremation, under the following conditions:

(a) In the event the crematory is unable to perform cremation upon receipt of the human remains, it shall place the human remains in a holding facility.

(b) If the human remains are not embalmed, they may not be held longer than 48 hours after the time of death outside of a refrigerated facility.

(5) Human remains delivered to a crematory may not be removed from the cremation container, and the cremation container must be cremated with the human remains.

(6) Unauthorized persons may not be permitted in the retort area while any human remains are awaiting cremation, being cremated, or being removed from the cremation chamber.

(7) The unauthorized, simultaneous cremation of human remains of more than one person within the same cremation chamber is prohibited unless the crematory has received express written authorization from all appropriate authorizing agents for the human remains to be cremated simultaneously. A written authorization exempts the crematory from liability for commingling of the product of the cremation process provided the authorization is complied with.

(8) The identification of the human remains, as indicated on the cremation container, must be verified by the crematory operator or crematory technician immediately prior to the cremation container being placed within the cremation chamber. The identification must be removed from the cremation container and be placed near the cremation chamber control panel where it must remain until the cremation process is complete.

(9) Upon completion of the cremation process, all recoverable residue must be removed from the cremation chamber. All residue of the cremation process must be separated from material other than bone fragments, which must be processed so as to reduce the bone fragments to unidentifiable particles.

(10) Cremated remains, with proper identification, must be packed and placed in a temporary container or urn ordered by the authorizing agent.

(11) If the cremated remains will not fit within the dimensions of the temporary container or urn, the remainder of the cremated remains must be returned to the authorizing agent in a separate container.

(12) If the cremated remains are to be shipped, the temporary container or designated receptacle ordered by the authorizing agent must be packed securely in a suitable, sturdy, pressure resistant, and properly sealed container.

(13) Cremated remains may be shipped only by a method that has an internal tracing system available and that provides a receipt signed by the person accepting delivery.

History: En. Sec. 7, Ch. 38, L. 1993.

37-19-706. Disposition of cremated remains. (1) The person arranging the cremation shall require the authorizing agent to provide a signed statement that specifies the ultimate disposition of the cremated remains, if known.

(2) The authorizing agent is responsible for specifying the disposition of the cremated remains. If, after a period of 90 days from the date of cremation, the authorizing agent has not specified the ultimate disposition or claimed the cremated remains, the crematory or person in possession of the cremated remains is responsible for disposition of the cremated remains and may then dispose of the cremated remains in any manner permitted by law. A record of the disposition must be made and kept by the crematory operator. This subsection applies to all cremated remains in the possession of a crematory or other party.

(3) Except with the express written consent of the authorizing agent, a person may not:

(a) dispose of or scatter cremated remains in a manner or in a location that commingles the cremated remains with those of another person. The provisions of this subsection (3) do not apply to the scattering of cremated remains from individual containers over public waterways or by air or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for that purpose.

(b) place cremated remains of more than one person in the same closed container.

(4) Cremated remains must be delivered to the individual specified by the authorizing agent on the cremation authorization form.

(5) A representative of the crematory and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased and the date, time, and place of the delivery. The crematory shall retain a copy of the receipt, and the original must be given to the authorizing agent. After this delivery, the cremated remains may be transported, in this state, without a permit and disposed of in accordance with this chapter.

History: En. Sec. 8, Ch. 38, L. 1993.

37-19-707. Limitation of liability. (1) A person signing a cremation authorization form shall warrant the truthfulness of any facts set forth in the form, including the identity of the deceased whose remains are to be cremated and the signer's authority to order cremation.

(2) A crematory, crematory operator, or crematory technician who properly cremates human remains, refuses to accept a body or perform a cremation, or refuses to release cremated remains due to an unresolved dispute is presumed to have acted properly and without negligence if the actions were performed in accordance with Title 37, chapter 19.

History: En. Sec. 9, Ch. 38, L. 1993.

37-19-708. Preneed cremation authorizations. (1) Preneed cremation authorizations may be made with a cemetery, funeral establishment, crematory, or any other party. Preneed authorizations must specify the ultimate disposition of the cremated remains, be signed by the authorizing agent, and meet other requirements established by board rule.

(2) A crematory operator or crematory technician shall comply with the terms of the preneed authorization in releasing or disposing of the cremated remains at the time of death.

(3) Upon payment for cremation and disposition, a crematory, crematory operator, or crematory technician in possession of a cremation authorization form and the deceased's human remains is not liable for the actual cremation and the disposition of the cremated remains if the terms of the preneed authorization have been complied with.

History: En. Sec. 10, Ch. 38, L. 1993.

Part 8

Perpetually Maintained Cemeteries — Trusts

Part Cross-References

Funeral plan trusts, Title 72, ch. 37, part 1.

37-19-801. Short title. This part may be referred to as the "Perpetually Maintained Cemeteries and Funeral and Cemetery Trusts Act".

History: En. Sec. 3, Ch. 52, L. 1997; amd. Sec. 7, Ch. 49, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 49 substituted "Perpetually Maintained Cemeteries and Funeral and Cemetery Trusts Act" for "Perpetually Maintained Cemeteries Act." Amendment effective October 1, 2019.

37-19-802. Purpose. The legislature declares that it is the public policy of this state to regulate privately owned, for-profit cemeteries to protect public health and promote financial stability through perpetual care and maintenance trusts, including the protection of money held in trust for prearranged funeral or related services.

History: En. Sec. 4, Ch. 52, L. 1997; amd. Sec. 8, Ch. 49, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 49 after "trusts" inserted "including the protection of money held in trust for prearranged funeral or related services"; and made minor changes in style. Amendment effective October 1, 2019.

37-19-803. Application of this part — exceptions. (1) This part applies to:

(a) all cemeteries and burial grounds located in the state of Montana unless the cemetery is owned and operated by:

(i) a church or similar religious organization;

(ii) a municipality or county government;

(iii) a family, as a private family burial ground where lots are not offered for sale; or

(iv) a community nonprofit association in which persons other than the bookkeeper and maintenance crew are not entitled to receive any pecuniary profit; and

(b) trust funds established for:

(i) cemetery perpetual care and maintenance funds; and

(ii) contracted prearranged funeral or related services under a preneed contract.

(2) This part does not apply to contracts for prearranged funeral or related services funded through insurance.

History: En. Sec. 5, Ch. 52, L. 1997; amd. Sec. 9, Ch. 49, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 49 inserted (1)(b) concerning trust funds; inserted (2) concerning nonapplicability of part; and made minor changes in style. Amendment effective October 1, 2019.

37-19-804 through 37-19-806 reserved.

37-19-807. Powers and duties of board — rulemaking. (1) In administering this part, the board may conduct reasonable periodic, special, or other examinations of a cemetery or cemetery company, mortuary, branch establishment, or crematory.

(2) The examination may include but is not limited to:

(a) an inspection of the physical condition or appearance of the cemetery;

(b) an audit of the financial condition of the cemetery company, mortuary, branch establishment, or crematory and any trust funds maintained by those entities; and

(c) any other examinations the board considers necessary or appropriate in the public interest, including inspections in response to public complaints.

(3) The examinations must be made by members or representatives of the board and may include a certified or registered public accountant or any other person designated by the board. The cost of the examination may be charged to the cemetery company, mortuary, branch establishment, or crematory.

(4) The board may issue or amend permits to operate a cemetery in accordance with the provisions of this part.

(5) The board may require a cemetery company, a mortuary, a branch establishment, or a crematory to observe minimum accounting principles and practices and to keep books and records in accordance with the principles and practices for a period that the board may by rule prescribe.

(6) The board may require a cemetery company to provide additional contributions to the perpetual care and maintenance fund of the cemetery as provided in this part, including but not limited to contributions not to exceed \$1,000 whenever a cemetery company fails to properly care for, maintain, or preserve a cemetery.

(7) The board may adopt rules to enforce the provisions of this part.

History: En. Sec. 6, Ch. 52, L. 1997; amd. Sec. 61, Ch. 467, L. 2005; amd. Sec. 10, Ch. 49, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 49 in (1) through (3) substituted current text concerning examinations of a cemetery, cemetery company, mortuary, branch establishment, or crematory for former text that read: "The board is charged with administering this part. The board may:

(1) conduct reasonable periodic, special, or other examinations of a cemetery or cemetery company, including but not limited to an examination of the physical condition or appearance of the cemetery, an audit of the financial condition of the cemetery company and any trust funds maintained by the cemetery company, and any other examinations the board considers necessary or appropriate in the public interest. The board may also order examinations in response to public complaints. The examinations must be made by members or representatives of the board that may include a certified or registered public accountant or any other person designated by the board"; in (5) after "cemetery company" inserted "a mortuary, a branch establishment, or a crematory"; and made minor changes in style. Amendment effective October 1, 2019.

2005 Amendment: Chapter 467 in (3) after "rules" deleted "and forms"; and made minor changes in style. Amendment effective July 1, 2005.

Cross-References

Board of funeral service, 2-15-1743.

37-19-808. Inspection of cemeteries and audit of cemetery companies. (1) For each cemetery examined or each cemetery company audited as provided in 37-19-807 and in accordance with this part, the cemetery company shall pay to the board a fee for each examination or audit as the board prescribes by rule. When an examination or inspection is ordered by the board, the cemetery company shall pay, at the state per diem rate, travel expenses, meals, and lodging for each day that a member of the board or an authorized examiner spends in examining the physical condition or appearance of a cemetery. Once audited, a cemetery company may not be required to submit to an audit at the request of the board for a period of 5 years unless complaints have resulted in a formal notice of disciplinary action by the department against the cemetery company.

(2) (a) In lieu of any financial examination that the board is authorized to make, the board may accept the audit of an independent certified or registered public accountant if the board has notified the cemetery company that the audit would be acceptable and the cemetery company has notified the board in writing that the audit will be prepared.

(b) The scope of the audit allowed under subsection (2)(a) must be at least equal to the scope of the examination required by the board.

History: En. Sec. 7, Ch. 52, L. 1997; amd. Sec. 11, Ch. 49, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 49 in (1) deleted former first sentence that read: "The board may order an inspection of a cemetery or may audit a cemetery company", in first sentence near middle after "audited" inserted "as provided in 37-19-807 and", and in second sentence near beginning after "examination" inserted "or inspection"; in (2)(b) at beginning deleted "The costs of the audit provided for in subsection (2)(a) must be borne by the cemetery company" and in middle after "audit" inserted "allowed under subsection (2)(a)"; and made minor changes in style. Amendment effective October 1, 2019.

37-19-809 through 37-19-813 reserved.

37-19-814. Permit — application. (1) By January 1, 1998, a person operating a cemetery or a cemetery company governed by this part must have a permit issued by the board. The permit must be displayed in a conspicuous place at the cemetery.

(2) A cemetery permit expires on the date set by board rule and may be renewed for a 5-year period upon payment of a fee set by the board. An application for a permit or renewal of a permit must designate a responsible person, including that person's address and telephone number, who is available to act on behalf of the cemetery company with regard to the requirements of this part. A cemetery company may designate a different person with board approval. An application for renewal of a permit must contain:

(a) the name of the cemetery company, the location of the cemetery, the name of the person in charge of the records of the cemetery company, and the telephone number of the cemetery company;

(b) the number and dollar amount of sales of cemetery lots, grave spaces, mausoleums, crypts, niches, and burial rights for which payment has been made in full and the number of certificates or deeds of conveyance issued during the preceding 5 calendar years;

(c) an accounting of the amounts paid into the perpetual care and maintenance fund and the income received from the fund during the preceding 5 calendar or fiscal years, including the total amount due to the fund whether paid in or not, the amount due to the fund at the date of the report, and the amount expended for maintenance of the cemetery;

(d) the names and addresses of the owners of the cemetery company or the officers and directors of the cemetery company, any change in control of the cemetery company that has occurred during the past 5 calendar or fiscal years, the date of incorporation, if applicable, and the resident agent and address of the registered agent's office if the cemetery company is a corporation; and

(e) any other information that the board requires by rule.

(3) The board may set a penalty fee for late renewal of a permit.

History: En. Sec. 8, Ch. 52, L. 1997.

37-19-815. Permit — amendment. (1) Whenever a cemetery company that is subject to the provisions of this part proposes to amend its present permit for construction of a mausoleum, reduction or increase in percentage of gross sales proceeds to be placed in the perpetual care and maintenance fund, expansion of a cemetery, or other changes in its operation, the cemetery company shall file an application for amendment of the permit with the board.

(2) The application must be accompanied by a fee and other information that the board requires by rule.

History: En. Sec. 9, Ch. 52, L. 1997.

37-19-816. Permit — transfer of ownership. (1) If a cemetery company that is subject to the provisions of this part is to be sold, if the ownership is to be otherwise transferred, or if a controlling interest in the company is to be sold or otherwise transferred, the proposed purchaser or transferee shall file an application for the issuance of a new permit with the board.

(2) The application must be accompanied by a fee and other information that the board requires by rule.

History: En. Sec. 10, Ch. 52, L. 1997.

37-19-817 through 37-19-821 reserved.

37-19-822. Cemetery perpetual care and maintenance fund. (1) A perpetual care and maintenance fund established pursuant to the provisions of this part for the purpose of administration, care, and maintenance of a cemetery, including lots, grave spaces, crypts, niches, burial rights, or other land or buildings, is a trust fund.

(2) The net income from the fund must be used by the owners, managers, or officers and directors of a cemetery company exclusively for the care and maintenance of the cemetery and may not be used for any other purpose.

(3) The principal of a perpetual care and maintenance fund must in all cases remain intact and inviolate and must be administered with the same care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person would use to accomplish the purpose of the trust as required by this section and reflected in the trust document.

(4) Each cemetery company shall maintain at a minimum the following:

(a) a general ledger and general journal or comparable books of entry showing all receipts, disbursements, assets, liabilities, and income of the perpetual care and maintenance fund;

(b) documents supporting and verifying each asset of the fund; and

(c) a trust agreement.

(5) The board may require a cemetery company to provide an accounting or audit of its perpetual care and maintenance fund.

(6) Each cemetery company shall deposit not less than 15% of the gross proceeds of each sale of a lot, grave space, crypt, niche, or burial right, as determined by the board, into the perpetual care and maintenance fund.

(7) In establishing a perpetual care and maintenance fund, a cemetery company may from time to time adopt plans for the general care and maintenance of its cemetery.

(8) A perpetual care and maintenance fund may receive, take, and hold any real or personal property that is bequeathed, devised, granted, given, or otherwise contributed to it.

History: En. Sec. 11, Ch. 52, L. 1997.

37-19-823. Records required. (1) A cemetery company shall make and keep accounts and records confirming that the cemetery company has made the required contributions to its perpetual care and maintenance fund. The burden is on the cemetery company to maintain the accounts and records.

(2) All sales contracts and deeds, unless otherwise authorized by the board, issued by a cemetery company must be numbered prior to their execution by the cemetery company and must contain those items the board prescribes by rule.

(3) A mortuary, branch establishment, or crematory shall make and keep accounts and records confirming that the money paid pursuant to a contract for a prearranged funeral or related service has been put in trust for the purposes for which the money was paid.

History: En. Sec. 12, Ch. 52, L. 1997; amd. Sec. 12, Ch. 49, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 49 inserted (3) concerning records requirements for a mortuary, branch establishment, or crematory; and made minor changes in style. Amendment effective October 1, 2019.

37-19-824. Conveyance. (1) An instrument of conveyance for a lot, grave space, mausoleum, crypt, niche, or burial right or part of a lot or grave space must be issued to the purchaser upon complete payment of the purchase price.

(2) Only a cemetery company or its agents may sell or convey the items listed in subsection (1). However, an owner may sell the item if the owner has first offered in writing to sell it to the cemetery company at the purchase price then being charged by the cemetery company for a similar item and the cemetery company has not accepted the offer within 30 days of the offer.

(3) (a) The secretary or other responsible person of a cemetery company shall file and record in the cemetery company's books all instruments of conveyance.

(b) An instrument of conveyance must be recorded by the cemetery company in the office of the county clerk and recorder and returned to the purchaser.

(4) An instrument of conveyance must be signed on behalf of a cemetery company by the person having proper authority to sign the instrument of conveyance.

History: En. Sec. 13, Ch. 52, L. 1997; amd. Sec. 2, Ch. 336, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 336 near beginning in (1) and twice in (4) after "conveyance" deleted "or deed"; at end of (3)(a) after "conveyance" deleted "and deeds"; inserted (3)(b) requiring conveyance instrument to be recorded and returned to purchaser; and made minor changes in style. Amendment effective October 1, 1999.

37-19-825. Preexisting cemeteries. A cemetery or cemetery company that is in existence on January 1, 1998, shall obtain the necessary permits required by this part in order to continue operation and is subject as of January 1, 1998, to the provisions of this part.

History: En. Sec. 14, Ch. 52, L. 1997.

37-19-826. Repealed. Sec. 6, Ch. 336, L. 1999.

History: En. Sec. 15, Ch. 52, L. 1997.

37-19-827. Contract for prearranged funeral plan or related services — trust requirement — interest — exception. (1) Prearranged funeral or related services may be presented, negotiated, and sold to the public only by a licensed mortician.

(2) Except as provided in subsection (5), all money paid pursuant to a contract for a prearranged funeral or related services must be held in trust for the purposes for which the money was furnished until the obligations of a mortuary, a branch establishment, a crematory, a cemetery firm, or a mausoleum-columbarium corporation have been:

(a) fulfilled according to the terms of the contract; or

(b) terminated, by mutual consent of the parties, and the money is refunded to the proper party.

(3) Any interest accrued by money in a trust must be held in the trust and is subject to the terms of the trust agreement and the rules of the board.

(4) The board may require a mortuary, a branch establishment, or a crematory to provide an accounting or audit of the funds held in trust.

(5) Money paid for the purchase of a lot, grave space, mausoleum, crypt, niche, or burial right or part of a lot or grave space is not subject to the trust requirements of this section if title passes to the purchaser at the time that the payment is made.

History: En. Sec. 3, Ch. 336, L. 1999; amd. Sec. 13, Ch. 49, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 49 in (1) before "licensed mortician" deleted "licensed funeral director or"; in (2) near end of introductory clause substituted "a mortuary, a branch establishment, a crematory" for "a funeral director, embalmer"; in (2)(b) at beginning inserted "terminated"; in (3) near end after "agreement" inserted "and the rules of the board"; inserted (4) allowing the board to require a mortuary, branch establishment, or crematory to provide an accounting or audit of the funds held in trust; and made minor changes in style. Amendment effective October 1, 2019.

Effective Date: This section is effective October 1, 1999.

Administrative Rules

Title 24, chapter 147, subchapter 15, ARM Branch facilities and prearranged funeral agreements.

37-19-828. Funeral trust fund — deposit of money. (1) (a) A party that provides services pursuant to a contract for a prearranged funeral or related services and that receives money under the contract shall deposit the money within 10 business days of receipt in a banking institution or invest the money in the stock of a savings or building and loan association or in the shares of a credit union.

(b) The banking institution, savings or building and loan association, or credit union shall maintain an office in this state and must be organized under the laws of this state, of another state, or of the United States.

(c) Deposits or investments made as provided in this section must be insured by an instrumentality of the federal government.

(2) Deposits or investments made pursuant to this section constitute a trust fund for the benefit of the person contracting for the prearranged funeral or related services. The money must be placed in a separate account in the name of the depositor as trustee for the person contracting for the prearranged funeral or related services.

History: En. Sec. 4, Ch. 336, L. 1999; amd. Sec. 1, Ch. 125, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 125 in (1)(a) substituted "10 business days" for "3 business days"; in (1)(b) substituted "maintain an office" for "have its principal place of business" and after "of this state" inserted "of another state"; and made minor changes in style. Amendment effective October 1, 2015.

Effective Date: This section is effective October 1, 1999.

Attorney General's Opinions

Money Allocated to Casket to Be Held in Trust: All money paid under a prearranged funeral plan contract, including money allocated to a casket that under the contract may be delivered at the seller's option prior to the time its use is required, must be held in trust as provided in 72-27-201 (renumbered 72-37-101 and repealed and replaced by this section). 37 A.G. Op. 178 (1978).

Payment for Burial Vault to Be Held in Trust: A person engaged in selling burial vaults comes within the provisions of 72-27-201 (renumbered 72-37-101 and repealed and replaced by this section) requiring that money received under funeral plans be placed in trust until the obligation is fulfilled according to its terms or the money is refunded to the proper party. 27 A.G. Op. 3 (1957).

37-19-829. Report of entity holding deposited money. A banking institution, savings or building and loan association, or credit union shall report to the department prior to February 1 of each year all amounts that it has received and held in trust accounts created as provided in 37-19-828. The report must contain the name and address of each trustee and trust beneficiary and must contain the amount of principal in each account and the amount of interest or dividends paid on each account.

History: En. Sec. 5, Ch. 336, L. 1999.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

37-19-830 reserved.

37-19-831. Penalty — injunction. (1) A person who violates a provision of this part is guilty of a misdemeanor and upon conviction shall be fined not more than \$500 or imprisoned for not more than 90 days, or both.

(2) The board may enforce any provision of this part by injunction or any other appropriate proceeding.

History: En. Sec. 16, Ch. 52, L. 1997.

Part 9 Right of Disposition of Remains

Part Compiler's Comments

Effective Date: This part is effective October 1, 2009.

37-19-901. Short title. This part may be cited as the "Montana Right of Disposition Act".

History: En. Sec. 1, Ch. 208, L. 2009.

37-19-902. Purpose. The legislature declares that it is the public policy of this state to provide an orderly and uniform system to determine which individuals hold the right to direct and carry out funeral and disposition arrangements for the remains of deceased individuals.

History: En. Sec. 2, Ch. 208, L. 2009.

37-19-903. Prepaid funeral arrangements — disposition directions — definition. (1) A person who is 18 years of age or older and of sound mind, by entering into a prepaid funeral contract with any mortuary licensed under Title 37, chapter 19, part 4, or by providing disposition directions may direct the location, manner, and conditions of disposition of the person's remains and the arrangements for funeral goods and services to be provided upon the person's death.

(2) The funeral prearrangements that are prepaid and contracted for with a licensed mortuary or the disposition directions may not be canceled or substantially revised unless the cancellation or substantial revision has been ordered by a person appointed by the decedent in the prepaid funeral contract or the disposition directions as the person authorized to cancel or revise the terms of the prepaid funeral contract or the disposition directions.

(3) As used in this section, the term "disposition directions" means:

(a) a video provided in a replayable format of the person who is the subject of the disposition directions in which the person describes the wishes for disposition and that is accompanied by a written attestation of the video accuracy by two witnesses who are at least 18 years of age; or

(b) a legible written instrument signed by the person who is the subject of the disposition directions and by two people who are at least 18 years of age who have witnessed the signing by the person. The written instrument may be but is not limited to a letter of instructions, a will, a trust document, or advance directives. A written instrument that does not name a person with the right to control the decedent's disposition must follow the priority of rights of disposition provided in 37-19-904.

History: En. Sec. 3, Ch. 208, L. 2009.

37-19-904. Priority of rights of disposition. (1) A person who is 18 years of age or older and of sound mind wishing to authorize another person to control the disposition of the person's remains may execute an affidavit or a written instrument before a notary public in substantially the following form:

"State of Montana] ss
County of]

I, [person designating another person to control the disposition of the person's remains] do hereby designate [person who is provided with the right to control the disposition] with the right to control the disposition of my remains upon my death. I have or have not attached specific directions concerning the disposition of my remains with which the designee shall substantially comply, provided the directions are lawful and there are sufficient resources in my estate to carry out the directions. Subscribed and sworn to before me this day of the month of of the year"

(2) Except as provided in 37-19-903, 37-19-907, and subsection (1) of this section, the right to control the disposition of the remains of a deceased person, including the location, manner, and conditions of the disposition and arrangements for funeral goods and services, vests in the following persons in the order named if the named person is 18 years of age or older and is of sound mind:

(a) for a decedent who was on active duty in the armed forces of the United States, a member of the Montana national guard, or a member of the federal reserves of the armed forces of the United States at the time of the decedent's death, any person named by the decedent as the person with the right to control the decedent's disposition in a department of defense form 93;

(b) a person designated by the decedent as the person with the right to control the decedent's disposition in an affidavit or written instrument executed in accordance with subsection (1);

(c) the surviving spouse;

(d) the sole surviving child of the decedent or, if there is more than one child of the decedent, the majority of the surviving children. However, less than one-half of the surviving children may be vested with the rights and duties provided in this section if those surviving children have used reasonable efforts to notify all other surviving children of their instructions and they are not aware of opposition to their instructions on the part of more than one-half of all surviving children.

(e) the surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent may be vested with the rights and duties provided in this section if that parent's reasonable efforts have been unsuccessful in locating the absent surviving parent.

(f) the surviving sibling of the decedent or, if there is more than one sibling of the decedent, the majority of the surviving siblings. However, less than one-half of the surviving siblings may be vested with the rights and duties provided in this section if those siblings have used reasonable efforts to notify all other surviving siblings of their instructions and they are not aware of any opposition to their instructions on the part of more than one-half of all surviving siblings.

(g) the surviving grandparent of the decedent or, if there is more than one surviving grandparent, the majority of the grandparents. However, less than one-half of the surviving grandparents may be vested with the rights and duties provided in this section if those grandparents have used reasonable efforts to notify all other surviving grandparents of their instructions and are not aware of any opposition to their instructions on the part of more than one-half of all surviving grandparents.

(h) the guardian of the decedent at the time of the decedent's death, if a guardian had been appointed;

(i) the personal representative of the estate of the decedent;

(j) the person in classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may exercise the right of disposition.

(k) if the disposition of the remains of the decedent is the responsibility of the state or a local government, the public officer, administrator, or employee responsible for arranging the disposition of the decedent's remains; and

(l) in the absence of any person provided for in subsections (2)(a) through (2)(k), any other person, including the mortician with custody of the remains, who is willing to assume the responsibility to act and arrange the disposition of the decedent's remains after attesting in writing that a good faith effort has been made to contact the individuals provided for in subsections (2)(a) through (2)(k).

History: En. Sec. 4, Ch. 208, L. 2009; amd. Sec. 1, Ch. 158, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 158 inserted (2)(a) regarding disposition of remains by department of defense form 93; and made minor changes in style. Amendment effective October 1, 2011.

Retroactive Applicability: Section 2, Ch. 158, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to individuals who executed a department of defense form 93 before October 1, 2011."

37-19-905. Arrangements provided by survivors. The provisions of 37-19-903 and 37-19-904(1) do not prevent the decedent's survivors, in the order listed in 37-19-904, from pursuing, at their own expense, meaningful services and making arrangements for funeral services that do not conflict with the decedent's instructions for disposition made in accordance with 37-19-903 and 37-19-904(1).

History: En. Sec. 5, Ch. 208, L. 2009.

37-19-906. Loss of right of disposition. A person entitled to the right of disposition under 37-19-904 forfeits that right and the right is passed on to the next qualifying person listed in 37-19-904 under the following circumstances:

(1) the person is charged with deliberate or negligent homicide in connection with the decedent's death. However, if the charges against the person are dismissed or if the person is acquitted of the charges, the right of disposition is returned to the person.

(2) the person does not exercise the person's right of disposition within 2 days after notification of the death of the decedent or within 3 days of the decedent's death, whichever is earlier;

(3) the person and the decedent are spouses and a petition to dissolve the marriage was pending at the time of the decedent's death; or

(4) the district court, pursuant to 37-19-907, determines that the person entitled to the right of disposition and the decedent were estranged at the time of death. For purposes of this subsection, "estranged" means a physical and emotional separation from the decedent existing at the time of death and that existed for a period of time prior to death that clearly demonstrates an absence of affection, trust, and regard for the decedent.

History: En. Sec. 6, Ch. 208, L. 2009.

37-19-907. Disputes. (1) The district court for the county where the decedent resided may award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition and make decisions regarding the decedent's remains if those sharing the right of disposition under 37-19-904 cannot agree.

(2) The following provisions apply to the court's determination under subsection (1):

(a) If the persons holding the right of disposition are two or more persons with the same relationship to the decedent and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, any of the persons or a mortician with custody of the remains may file a petition asking the district court to make a determination in the matter.

(b) In making a determination, the district court shall consider the following:

(i) the reasonableness and practicality of any proposed funeral arrangements and disposition;

(ii) the degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;

(iii) the desires of the person or persons who are able and willing to pay the cost of the funeral arrangements and disposition;

(iv) the convenience and needs of other family and friends wishing to pay respects;

(v) the desires of the decedent;

(vi) the degree to which the funeral arrangements would allow maximum participation by all those wishing to pay their respects.

(3) (a) In the event of a dispute regarding the right of disposition, a mortician may not be held liable for refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent or complete the arrangements for final disposition of the remains until the mortician receives a court order or a written agreement signed by the parties to the disagreement that decides the final disposition of the remains.

(b) If the mortician retains the remains for final disposition while the parties are in disagreement, the mortician may embalm or refrigerate and shelter the body, or both, in order to preserve the body while awaiting the final decision of the district court and may add the cost of embalming or refrigeration and sheltering, or both, to the final disposition costs.

(c) If a mortician files a petition under this section for an order of disposition from the district court, the mortician may add the legal fees and court costs associated with the petition to the final disposition costs.

(d) This section may not be construed to require or to impose a duty upon a mortician to bring an action under this section. A mortician may not be held criminally or civilly liable for choosing not to bring an action under this section.

(4) Except to the extent that it may be considered by the district court under subsection (2)(b)(iii), the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and disposition does not give that person a greater right of disposition than the person would otherwise have.

(5) The personal representative of the estate of the decedent does not have, by virtue of being the personal representative, a greater claim to the right of disposition than the person would otherwise have under the provisions of this part.

History: En. Sec. 7, Ch. 208, L. 2009.

37-19-908. Right to rely. (1) A person who signs a funeral agreement, cremation authorization form, or other authorization for disposition must be considered as warranting the truthfulness of any facts set forth in the agreement, form, or authorization, including:

- (a) the identity of the decedent whose remains are subject to the disposition; and
- (b) the person's authority to order the disposition.

(2) A mortician may rely on the funeral service agreement, cremation authorization form, or other authorization and may carry out the instructions of the person or persons who the mortician reasonably believes hold the right of disposition.

(3) A mortician is not responsible to contact or to independently investigate the existence of any next of kin or relatives of the decedent.

(4) If a class includes two or more persons who are equal in priority, a mortician may rely on and act according to the instructions of the first person in the class to make funeral and disposition arrangements if another person in the class has not provided to the mortician written notice of the person's objections to the arrangements and the mortician does not have knowledge of any objections to the arrangements by other members of the class.

History: En. Sec. 8, Ch. 208, L. 2009.

37-19-909. Immunity. A mortuary or mortician who relies in good faith on the instructions of an individual claiming the right of disposition is not subject to criminal or civil liability or subject to disciplinary action for carrying out the disposition of the remains in accordance with the instructions.

History: En. Sec. 9, Ch. 208, L. 2009.