

1 SB94
2 127666-3
3 By Senators Keahey and Ward
4 RFD: Judiciary
5 First Read: 01-MAR-11

1 SB94

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4 ENROLLED, An Act,

5 Relating to the Alabama Board of Funeral Service; to
6 amend Sections 34-13-1, 34-13-7, 34-13-9, 34-13-11, 34-13-12,
7 34-13-20, 34-13-22, 34-13-23, 34-13-26, 34-13-50, 34-13-51,
8 34-13-52, 34-13-53, 34-13-55, 34-13-56, 34-13-70, 34-13-72,
9 34-13-73, 34-13-74, 34-13-90, 34-13-94, 34-13-111, 34-13-113,
10 34-13-114, 34-13-115, 34-13-116, 34-13-120, and 34-13-130,
11 Code of Alabama 1975, to define mortuary service and provide
12 further for the contents and square footage of a funeral
13 establishment and mortuary service; to increase the maximum
14 fine for funeral directing or operating a funeral
15 establishment without a license; to require all funeral
16 service, cemetery service, and funeral merchandise pricing to
17 conform to Federal Trade Commission rules; to specify who may
18 enter into a preneed contract; to revise the law relating
19 authorizing an agent for the purpose of directing the
20 disposition of remains and arranging for funeral services; to
21 further limit the liability of a funeral director who relies
22 upon an authorized agent; to provide further for diversity in
23 the membership of the board; to authorize the board to
24 delegate administration of license examinations; to increase
25 the number of days per year board members may receive per diem

1 from 10 to 20; to provide for the filing of a complaint
2 against a licensee and provide procedures for conducting
3 hearings; to require an applicant for licensure as a funeral
4 director to have graduated from an approved embalming school
5 or college; to increase the reciprocal license fees; to
6 provide for a temporary special work permit; to require the
7 public display of certificates of licensure; to increase
8 annual license renewal fees and reinstatement fees for funeral
9 directors, embalmers, and operators; to include failure to
10 cooperate with the board as a ground for punishment of a
11 licensee and to increase fines for violations; to increase the
12 application fee and examination fees for funeral directors; to
13 specify subjects and passing grade for the funeral directors
14 examination; to increase the fee for a special operating
15 permit; to increase the application fee and examination fee
16 for licensure as an embalmer; to specify the passing grade for
17 the embalmer's license examination; to increase the funeral
18 establishment license inspection fee, reinspection fee, annual
19 inspection fee, location transfer fee, and new branch or
20 location fee; to increase the application fee for a license to
21 operate a funeral establishment and provide further for the
22 contents of a funeral establishment; to require the submission
23 of an application, payment of an application fee, and an
24 inspection prior to operating a mortuary service; to increase
25 the fee and charge a fee for changing the name of a funeral

1 establishment or mortuary service; to authorize the board to
2 revoke, suspend, or refuse to renew the license of a mortuary
3 service; to increase the fine imposed upon any person, firm,
4 partnership, society, group, or corporation failing to
5 register a funeral home, mortuary, chapel, funeral
6 establishment, or mortuary service; to prohibit any crematory
7 facility from cremating deceased animals; to delete certain
8 antiquated language pertaining to an apprentice certificate or
9 license; to repeal Section 34-13-28, Code of Alabama 1975,
10 providing for the reporting of receipts and disbursements of
11 the board to the Governor and the Legislature; and to repeal
12 Article 4, consisting of Sections 34-13-150, 34-13-151, and
13 34-13-152, of Chapter 13, Title 34, Code of Alabama 1975,
14 relating to donor eye enucleation licenses; and to specify an
15 effective date.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Sections 34-13-1, 34-13-7, 34-13-9,
18 34-13-11, 34-13-12, 34-13-20, 34-13-22, 34-13-23, 34-13-26,
19 34-13-50, 34-13-51, 34-13-52, 34-13-53, 34-13-55, 34-13-56,
20 34-13-70, 34-13-72, 34-13-73, 34-13-74, 34-13-90, 34-13-94,
21 34-13-111, 34-13-113, 34-13-114, 34-13-115, 34-13-116,
22 34-13-120, and 34-13-130 of the Code of Alabama 1975, are
23 amended to read as follows:

24 "§34-13-1.

1 "(a) For purposes of this chapter, the following
2 terms shall have the following meanings:

3 "(1) ACCREDITED SCHOOL or COLLEGE OF MORTUARY
4 SCIENCE. A school or college approved by the Alabama Board of
5 Funeral Service and which maintains a course of instruction of
6 not less than 48 calendar weeks or four academic quarters or
7 college terms and which gives a course of instruction in the
8 fundamental subjects including, but not limited to, the
9 following:

10 "a. Mortuary management and administration.

11 "b. Legal medicine and toxicology as it pertains to
12 funeral directing.

13 "c. Public health, hygiene, and sanitary science.

14 "d. Mortuary science, to include embalming
15 technique, in all its aspects; chemistry of embalming, color
16 harmony; discoloration, its causes, effects, and treatment;
17 treatment of special cases; restorative art; funeral
18 management; and professional ethics.

19 "e. Anatomy and physiology.

20 "f. Chemistry, organic and inorganic.

21 "g. Pathology.

22 "h. Bacteriology.

23 "i. Sanitation and hygiene.

24 "j. Public health regulations.

1 "k. Other courses of instruction in fundamental
2 subjects as may be prescribed by the Alabama Board of Funeral
3 Service.

4 "(2) AMERICAN BOARD OF FUNERAL SERVICE EDUCATION.
5 That funeral service educational organization which is an
6 agency granted official recognition by the United States
7 Secretary of Education and which is composed of members
8 representing the American Association of College of Mortuary
9 Science, the Conference of Funeral Service Examining Board of
10 the United States, Inc., the National Association of Colleges
11 of Mortuary Science, and the University Mortuary Science
12 Education Association and which has as its object the
13 furtherance of education in the field of funeral service and
14 in fields necessary to, or allied with, the field of funeral
15 service, and further to formulate standards of funeral service
16 education and to grant accreditation to qualified schools and
17 colleges of mortuary science and to do all things incidental
18 to the foregoing.

19 "(3) APPRENTICE EMBALMER or EMBALMER'S APPRENTICE.
20 Any person engaged in the study of the art of embalming under
21 the instructions and supervision of a licensed embalmer
22 practicing in this state.

23 "(4) APPRENTICE FUNERAL DIRECTOR or FUNERAL
24 DIRECTOR'S APPRENTICE. Any person operating under or in
25 association with a funeral director for the purpose of

1 learning the business or profession of funeral director, to
2 the end that he or she may become licensed under this chapter.

3 "(5) AUTHORIZING AGENT. A person at least 18 years
4 of age, except in the case of a surviving spouse or parent,
5 who is legally entitled to order the cremation or final
6 disposition of particular human remains.

7 "(6) BOARD. The Alabama Board of Funeral Service.

8 "(7) CEMETERY. A place dedicated to and used or
9 intended to be used for the permanent interment of human
10 remains. It may be either land or earth interment; a mausoleum
11 for vault or crypt entombment; a structure or place used or
12 intended to be used for the interment of cremated remains;
13 cryogenic storage; or any combination of one or more thereof.

14 "(8) CEMETERY AUTHORITY. Any individual, person,
15 firm, profit or nonprofit corporation, trustee, partnership,
16 society, religious society, church, association or
17 denomination, municipality, or other group or entity, however
18 organized, insofar as they or any of them may now or hereafter
19 establish, own, operate, lease, control, or manage one or more
20 cemeteries, burial parks, mausoleums, columbariums, or any
21 combination or variation thereof, or hold lands or structures
22 for burial grounds or burial purposes in this state and engage
23 in the operation of a cemetery, including any one or more of
24 the following: The care and maintenance of a cemetery; the
25 interment, entombment, and memorialization of the human dead

1 in a cemetery; the sale, installation, care, maintenance, or
2 any combination thereof, with respect of monuments, markers,
3 foundations, memorials, burial vaults, urns, crypts,
4 mausoleums, columbariums, flower vases, floral arrangements,
5 and other cemetery accessories, for installation or use within
6 a cemetery; and the supervision and conduct of funeral and
7 burial services within the bounds of the cemetery. It is the
8 legislative intent of this chapter that a cemetery authority,
9 to the extent that it engages in any of the activities
10 described in this subdivision, shall not be affected by this
11 chapter and shall not be deemed to have entered into or
12 engaged in the practice of funeral directing, embalming, or
13 funeral establishment operation.

14 "(9) CREMATION. The technical process, using heat
15 and flame, that reduces human remains to bone fragments. The
16 reduction takes place through heat and evaporation. Cremation
17 shall include the processing, and may include the
18 pulverization, of the bone fragments.

19 "(10) CREMATIONIST. A person who performs the
20 procedure of cremation.

21 "(11) CREMATORY. A building or portion of a building
22 that houses a retort and that may house a holding facility for
23 purposes of cremation and as part of a funeral establishment.

24 "(12) EMBALMER. Any person engaged or holding
25 himself or herself out as engaged in the business, practice,

1 science, or profession of embalming, whether on his or her own
2 behalf or in the employ of a registered and licensed funeral
3 director.

4 "(13) EMBALMING. The practice, science, or
5 profession, as commonly practiced, of preserving,
6 disinfecting, and preparing by application of chemicals or
7 other effectual methods, human dead for burial, cremation, or
8 transportation.

9 "(14) FUNERAL. A ceremony for celebrating,
10 sanctifying, or remembering the life of a person who has died.
11 A funeral may be divided into the following two parts:

12 "a. The funeral service, which may take place at a
13 funeral home, church, or other place.

14 "b. The disposition, which may take place by the
15 grave, tomb, mausoleum, or crematory where the body of the
16 decedent is to be buried or cremated.

17 "(15) FUNERAL DIRECTING. The practice of directing
18 or supervising funerals, the practice of preparing dead human
19 bodies for burial by means other than embalming, or the
20 preparation for the disposition of dead human bodies; the
21 making of arrangements or providing for funeral services or
22 the making of financial arrangements for the rendering of
23 these services or the sale of this merchandise or supplies;
24 the provision or maintenance of a place for the preparation
25 for disposition of dead human bodies; or the use of the terms

1 funeral director, undertaker, mortician, funeral parlor, or
2 any other term from which can be implied the practice of
3 funeral directing; or the holding out to the public that one
4 is a funeral director or engaged in a practice described in
5 this subdivision.

6 "(16) FUNERAL DIRECTOR. A person required to be
7 licensed to practice the profession of funeral directing under
8 the laws of this state, who meets the public, who plans
9 details of funeral services with members of the family and
10 minister or any other person responsible for such planning, or
11 who directs, is in charge, or apparent charge of, and
12 supervises funeral service in a funeral home, church, or other
13 place; who enters into the making, negotiation, or completion
14 of financial arrangements for funerals, including, but not
15 limited to, the sale and selection of funeral supplies, or who
16 uses in connection with the profession of funeral directing
17 the terms funeral director, undertaker, funeral counselor,
18 mortician, or any other term or picture or combination thereof
19 when considered in context in which used, from which can be
20 implied the practicing of the profession of funeral directing
21 or that the person using such term or picture can be implied
22 to be holding himself or herself out to the public as being
23 engaged in the profession of funeral directing; and for all
24 purposes under Alabama law, a funeral director is considered a

1 professional. For the purposes of this chapter, the term does
2 not include any cemetery authority.

3 "(17) FUNERAL ESTABLISHMENTS. The term includes any
4 funeral home or mortuary service located at a specific street
5 address where the profession of funeral directing, embalming,
6 or cremation is practiced in the care, planning, and
7 preparation for burial or cremation or transportation of human
8 dead. The term does not include any cemetery or land or
9 structure owned, operated, leased, controlled, or managed by
10 any cemetery authority as a cemetery. A funeral establishment
11 shall consist of and maintain all of the following facilities:

12 "a. A preparation room equipped with sanitary
13 nonporous floor and walls, necessary drainage and ventilation,
14 and containing operating embalming equipment, necessary
15 approved tables, instruments, hot and cold running water,
16 containers or receptacles for soiled linen or clothing, and
17 supplies for the preparation and embalming of dead human
18 bodies for burial, cremation, and transportation.

19 "b. A display room containing a stock of adult
20 caskets and funeral supplies displayed in full size, cuts,
21 photographs, or electronic images. At no time shall less than
22 eight different adult size caskets be on the premises.

23 "c. At least one operating funeral coach or hearse
24 properly licensed and equipped for transporting human remains
25 in a casket or urn.

1 "d. If engaged in the practice of cremation, at
2 least one operable retort for cremation and an adequate supply
3 of urns for display and sale.

4 "e. A room suitable for public viewing or other
5 funeral services that is able to accommodate a minimum of 100
6 people.

7 "f. An office for holding arrangement conferences
8 with relatives or authorizing agents.

9 "(18) FUNERAL SUPPLIES or FUNERAL MERCHANDISE.
10 Caskets made of any material for use in the burial or
11 transportation of human dead; outer receptacles, when sold by
12 a funeral director, including burial vaults and urns, for
13 cremated human remains; clothing used to dress human dead when
14 sold by a funeral director; and all equipment and
15 accouterments normally required for the preparation for burial
16 or funeral and other disposition of human dead.

17 "(19) MANAGING EMBALMER. A licensed embalmer who has
18 full charge, control, and supervision of all activities
19 involving the preparation room and embalming.

20 "(20) MANAGING FUNERAL DIRECTOR. A licensed funeral
21 director who has full charge, control, and supervision of all
22 activities involving funeral directing at a funeral
23 establishment.

24 "(21) MORTUARY SCIENCE. The scientific,
25 professional, and practical aspects, with due consideration

1 given to accepted practices, covering the care, preparation
2 for burial, or transportation of dead human bodies, which
3 shall include the preservation and sanitation of the bodies
4 and restorative art and those aspects related to public
5 health, jurisprudence, and good business administration.

6 "(22) MORTUARY SERVICE. A location with a specific
7 street address where embalming or cremation, or both, is
8 practiced for a licensed funeral establishment and where no
9 services or merchandise are sold directly or at retail to the
10 public. A mortuary service shall consist of and maintain all
11 of the following facilities:

12 "a. A preparation room equipped with sanitary
13 nonporous floor and walls, operating embalming equipment, and
14 necessary drainage and ventilation and containing necessary
15 approved tables, instruments, hot and cold running water,
16 containers or receptacles for soiled linen or clothing, and
17 supplies for the preparation and embalming of dead human
18 bodies for burial, cremation, and transportation.

19 "b. At least one operating motor vehicle properly
20 licensed and equipped for transporting human remains in a
21 casket or urn.

22 "c. If engaged in the practice of cremation, at
23 least one operable retort for cremation.

1 "(23) OPERATOR. A person, corporation, firm, legal
2 representative, or other organization owning or operating a
3 funeral establishment.

4 "(24) PRACTICAL EMBALMERS. Any person who has been
5 actively and continuously engaged or employed in the practice
6 of embalming under the supervision of a licensed embalmer for
7 four consecutive years immediately preceding May 1, 1975, and
8 has been issued a license as a practical embalmer under the
9 grandfather provisions of this chapter.

10 "(25) PROCESSING or PULVERIZATION. The reduction of
11 identifiable bone fragments after the completion of the
12 cremation process to unidentifiable bone fragments or
13 granulated particles by manual or mechanical means.

14 "(26) RETORT. An enclosed space within which the
15 cremation process takes place.

16 "(27) TEMPORARY CONTAINER. A receptacle for cremated
17 remains, usually composed of cardboard, plastic, or similar
18 material, that can be closed in a manner that prevents the
19 leakage or spillage of the cremated remains or the entrance of
20 foreign material, and is a single container of sufficient size
21 to hold the cremated remains until an urn is acquired or the
22 cremated remains are scattered or buried.

23 "(28) URN. A receptacle designed to encase cremated
24 remains.

1 "(b) Nothing in this chapter shall require a funeral
2 director or funeral establishment to have or provide a chapel
3 or to restrict the conduct of funeral services from a church
4 or chapel.

5 "(c) Nothing contained in the definition of funeral
6 directing, or in any other provision of this chapter, shall be
7 applicable to or regulate or restrict cemetery authorities in
8 the conduct of activities of a cemetery authority ; or be
9 applicable to or regulate or restrict the carrying on by any
10 cemetery authority of any activities, functions, practices,
11 and services which may now or hereafter (1) constitute any
12 part of the operation or management of a cemetery or of the
13 property of a cemetery or (2) otherwise consist of the
14 interment or entombment of the human dead or memorialization
15 of the human dead in any manner within a cemetery property.

16 "§34-13-7.

17 "Any person who embezzles, abstracts, or willfully
18 misapplies any of the moneys, funds, security, or credit of
19 the board or who misuses any of the funds or fees so
20 collected, by virtue of this chapter, and any person who, with
21 like intent, aids or abets any person in violation of this
22 chapter shall be guilty of a felony and, upon conviction,
23 shall be punished by a fine of not less than five hundred
24 dollars (\$500) nor exceeding five thousand dollars (\$5,000)
25 and imprisonment in the penitentiary for a period of not less

1 than one year and not more than five years, and the principal
2 offenders and those aiding and abetting same may be charged in
3 the same count, and separate offenses may be charged, in
4 separate counts, in the same indictment and tried together.
5 Any person found guilty of offering or of accepting a bribe
6 whereupon any person is illegally licensed to practice
7 embalming, to practice funeral directing, or to operate a
8 funeral establishment in this state shall be punished by a
9 fine of not less than five hundred dollars (\$500) nor
10 exceeding ten thousand dollars (\$10,000) and may be imprisoned
11 in the penitentiary for a period of one to three years, and
12 the principal offenders and those aiding and abetting same may
13 be charged in the same count and separate offenses may be
14 charged in separate counts in the same indictment and tried
15 together.

16 "§34-13-9.

17 "Funeral service, cemetery service, and funeral
18 merchandise pricing shall conform to rules established by the
19 Federal Trade Commission.

20 "§34-13-11.

21 "(a) A person, who is at least 18 years of age and
22 of sound mind, may enter into a contract to act as authorizing
23 agent and direct the location, manner, and conditions of
24 disposition of remains and arrange for funeral goods and
25 services to be provided upon death. Except as otherwise

1 provided in subsection (b), the right to control the
2 disposition of the remains of a deceased person as an
3 authorizing agent, including the location, manner, and
4 conditions of disposition and arrangements for funeral goods
5 and services to be provided, shall vest in the following
6 persons in the priority listed and the order named, provided
7 the person is at least 18 years of age and of sound mind:

8 "(1) The person designated by the decedent as
9 authorized to direct disposition pursuant to Public Law No.
10 109-163, Section 564, as listed on the decedent's United
11 States Department of Defense Record of Emergency Data, DD Form
12 93, or its successor form, if the decedent died while serving
13 on active duty in any branch of the United States Armed
14 Forces, United States Reserve Forces, or National Guard.

15 "(2)a. The person designated by the decedent in an
16 affidavit executed in accordance with paragraph b.

17 "b. Any person, at least 18 years of age and of
18 sound mind, may authorize another person to control the
19 disposition of his or her remains pursuant to an affidavit
20 executed before a notary public in substantially the following
21 form:

22 ""State of Alabama

23 "County of _____

24 "I, _____ designate _____ to
25 control the disposition of my remains upon my death. I ___ have

1 __ have not attached specific directions concerning the
2 disposition of my remains. If specific directions are
3 attached, the designee shall substantially comply with those
4 directions, provided the directions are lawful and there are
5 sufficient resources in my estate to carry out those
6 directions.

7 "Subscribed and sworn to before me this __ day of
8 the month of _____ of the year _____.

9 "_____ (signature of notary public)"

10 "(3) The surviving spouse.

11 "(4) The sole surviving child of the decedent or, if
12 there is more than one surviving child, a majority of the
13 surviving children. Less than a majority of the surviving
14 children may be vested with the rights of this section if
15 reasonable efforts have been made to notify all surviving
16 children of the instructions and a majority of the surviving
17 children are not aware of any opposition to the instructions.

18 "(5) The surviving parent or parents of the
19 decedent. If one surviving parent is absent, the remaining
20 parent shall be vested with the rights and duties of this
21 section after reasonable efforts in locating the absent
22 surviving parent have been unsuccessful.

23 "(6) The surviving sibling of the decedent or, if
24 there is more than one surviving sibling, a majority of the
25 surviving siblings. Less than a majority of the surviving

1 siblings may be vested with the rights and duties of this
2 section if reasonable efforts have been made to notify all
3 surviving siblings of the instructions and a majority of the
4 surviving siblings are not aware of any opposition to the
5 instructions.

6 "(7) The surviving grandparent of the decedent or,
7 if there is more than one surviving grandparent, a majority of
8 the surviving grandparents. Less than a majority of the
9 surviving grandparents may be vested with the rights and
10 duties of this section if reasonable efforts have been made to
11 notify all surviving grandparents of the instructions and a
12 majority of the surviving grandparents are not aware of any
13 opposition to the instructions.

14 "(8) The guardian of the decedent at the time of the
15 death of the decedent, if a guardian had been appointed.

16 "(9) The personal representative of the estate of
17 the decedent.

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

23 "(11) The public officer, administrator, or employee
24 responsible for arranging the final disposition of the remains
25 of the decedent if the disposition of the remains is the

1 responsibility of the state or a political subdivision of the
2 state.

3 "(12) Any other person willing to assume the
4 responsibility of acting on and arranging the final
5 disposition of the remains of the decedent, including the
6 funeral director that has custody of the body, in the absence
7 of any person specified in subdivisions (1) to (11),
8 inclusive. The person shall attest in writing that good faith
9 efforts to contact the persons specified in subdivisions (1)
10 to (11), inclusive, have been unsuccessful.

11 "(b) The right of disposition shall be forfeited and
12 passed to the next qualifying person listed in subsection (a),
13 in any of the following circumstances:

14 "(1) The person is charged with first or second
15 degree murder or voluntary manslaughter in connection with the
16 death of the decedent and the charges are known by the
17 mortician. If the charges against the person are dismissed or
18 the person is acquitted of the charges, the right of
19 disposition shall be reinstated.

20 "(2) The person does not exercise his or her right
21 of disposition within two days after notification of the death
22 of the decedent or within three days after the death of the
23 decedent, whichever is earlier.

1 "(3) If the person is the spouse of the decedent and
2 a petition to dissolve the marriage was pending at the time of
3 death of the decedent.

4 "(4) If the judge of probate court determines,
5 pursuant to subsection (c), that the person entitled to the
6 right of disposition and the decedent were estranged at the
7 time of death. For the purposes of this subdivision, estranged
8 means a physical and emotional separation that has existed for
9 such a period of time that an absence of affection, trust, and
10 regard for the decedent is clearly demonstrated.

11 "(c) Notwithstanding subsections (a) and (b), the
12 judge of probate of the county of residence of the decedent
13 may award the right of disposition to the person the judge of
14 probate determines to be the most fit and appropriate to
15 manage the right of disposition, and may make decisions
16 regarding the remains of the decedent if the persons
17 possessing the right of disposition do not agree. If two or
18 more persons who possess an equal right of disposition are not
19 able by majority vote to agree upon the disposition of the
20 remains of the decedent, any of those persons or the funeral
21 establishment with custody of the remains may file a petition
22 asking the judge of probate to make a determination in the
23 matter. In making such a determination, the judge of probate
24 shall consider all of the following:

1 "(1) The reasonableness and practicality of the
2 proposed funeral and disposition arrangements.

3 "(2) The degree of the personal relationship between
4 the decedent and each person possessing a right of
5 disposition.

6 "(3) The financial ability and willingness of each
7 person possessing a right of disposition to pay the cost of
8 the funeral and disposition arrangements.

9 "(4) The convenience and needs of other family
10 members and friends who wish to pay their respects and the
11 degree to which the funeral arrangements would allow maximum
12 participation by all who wish to pay their respects.

13 "(5) The desires of the decedent.

14 "(d) Absent negligence, wantonness, recklessness, or
15 deliberate misconduct in the event of a dispute regarding the
16 right of disposition, a funeral establishment may not be held
17 liable for refusing to accept remains, for interring, or for
18 otherwise disposing of the remains of a decedent or for
19 completing arrangements for the final disposition of remains
20 unless and until the funeral establishment receives an order
21 from the judge of probate, or other written agreement signed
22 by all persons possessing a right of disposition, regarding
23 the final disposition of the remains. If a funeral
24 establishment retains remains for final disposition during a
25 disagreement, the funeral establishment may embalm or

1 refrigerate and shelter the body, or both, to preserve the
2 body pending the final decision of the judge of probate. The
3 funeral establishment may add the cost of embalming or
4 refrigeration and sheltering, or both, to the final
5 disposition cost. If a funeral establishment files a petition
6 pursuant to subsection (c), the funeral establishment may add
7 any associated legal fees and court costs to the cost of final
8 disposition. This section may not be construed to require or
9 impose a duty upon a funeral establishment to bring an action
10 pursuant to this section. A funeral establishment and its
11 employees may not be held criminally or civilly liable for not
12 bringing an action pursuant to this section.

13 "(e) Except to the degree that it may be considered
14 by the judge of probate pursuant to subdivision (3) of
15 subsection (c), the fact that a person has paid or has agreed
16 to pay for all or a part of funeral and final disposition
17 arrangements does not give that person a greater voice in
18 right of disposition decisions than he or she would have had
19 otherwise. The personal representative of the estate of a
20 decedent, by virtue of being the personal representative, does
21 not have a greater voice in right of disposition decisions
22 than he or she would have had otherwise.

23 "§34-13-12.

24 "(a) Any person signing a funeral service agreement,
25 cremation authorization form, or any other authorization for

1 disposition by his or her signature shall attest to the
2 truthfulness of any facts set forth in the document including,
3 but not limited to, the identity of the decedent whose remains
4 are to be buried, cremated, or otherwise disposed of and the
5 authority of the person to order the disposition. A funeral
6 establishment may rely on a funeral service agreement,
7 contract, or authorization in carrying out the instructions of
8 the person the funeral establishment reasonably believes to
9 hold the right of disposition. A funeral establishment is not
10 responsible for contacting or independently investigating the
11 existence of any next-of-kin or relative of a decedent. If
12 there is more than one person in a class with equal priority
13 and the funeral establishment has no knowledge of any
14 objection by any other member of that class, the funeral
15 establishment may rely upon and act according to the
16 instructions of the first person in the class to make funeral
17 and disposition arrangements.

18 "(b) Absent negligence, wantonness, recklessness, or
19 deliberate misconduct, no funeral establishment or funeral
20 director who relies in good faith upon the instructions of a
21 person who claims a right of disposition shall be subject to
22 criminal or civil liability, or be subject to disciplinary
23 action, for carrying out the disposition of the remains in
24 accordance with those instructions.

25 "§34-13-20.

1 "(a) There is established the Alabama Board of
2 Funeral Service, consisting of seven members, each of whom
3 shall be citizens of the United States and of the State of
4 Alabama. All members of the former Alabama Embalming Board who
5 are holding office on September 10, 1975, by virtue of that
6 office, shall become members of the Alabama Board of Funeral
7 Service for the term ending December 31, 1976. Not more than
8 one member of the Alabama Board of Funeral Service may reside
9 in the same district as created under Section 34-13-21, and if
10 more than one member of the State Embalming Board resides in
11 one district at the time of the organization of the board, the
12 Governor shall select one member of the Embalming Board to be
13 a member of the original Alabama Board of Funeral Service from
14 the district, and the other member of the Embalming Board
15 shall not be eligible for membership on the board.

16 "(b) At a special meeting called for such purpose,
17 to be held in Montgomery, within 45 days from September 10,
18 1975, the Alabama Funeral Directors Association, Incorporated,
19 and the Alabama Funeral Directors and Morticians Association,
20 Incorporated, in joint meeting, shall nominate three qualified
21 persons for each of the positions as members of the original
22 board of the Alabama Board of Funeral Service which are not
23 filled by members of the State Embalming Board. The names of
24 such persons so nominated shall be promptly certified by the
25 secretary of the Alabama Funeral Directors Association,

1 Incorporated, and the Alabama Funeral Directors and Morticians
2 Association, Incorporated, to the Governor who shall appoint
3 the members of the board from among the persons so nominated.
4 Not more than four members of the board at any time may be
5 members of the same race and the membership of the board shall
6 be inclusive and reflect the racial, gender, geographic,
7 urban/rural, and economic diversity of the state. The board
8 shall annually report to the Legislature by the second
9 legislative day of each regular session the extent to which
10 the board has complied with the diversity provisions provided
11 for in this subsection. The board shall annually report to the
12 Legislature by the second legislative day of each regular
13 session the extent to which the board has complied with the
14 diversity provisions provided for in this subsection. Four
15 members shall be appointed for a term ending December 31,
16 1977, and the board shall be constituted so that the terms of
17 three members of the board shall end December 31, 1976, and
18 the terms of four members shall end December 31, 1977. The
19 terms of the members of the State Embalming Board, who become
20 members of the Alabama Board of Funeral Service under this
21 chapter, shall expire December 31, 1976, unless there are more
22 than three such members, in which event, the Governor shall
23 designate which of the three members of the State Embalming
24 Board shall serve for terms ending December 31, 1976, and
25 which shall serve for terms ending December 31, 1977.

1 "(c) After selection of the original members of the
2 Alabama Board of Funeral Service and during October of each
3 year, all embalmers and all funeral directors licensed under
4 this chapter shall meet in Montgomery, at a time and date in
5 October and at a place fixed by the board, for the purpose of
6 nominating three persons to the Governor for each vacancy on
7 the board. Not more than two nominees shall be members of the
8 same race. The Governor shall promptly appoint one of the
9 three persons so nominated.

10 "(d) The successors to the original members of the
11 board shall be selected for terms of two years. After the
12 terms of the original members of the board, four of the
13 members serving on the board shall be practicing and licensed
14 embalmers in Alabama for the last 10 consecutive years
15 immediately preceding their appointment and shall be licensed
16 embalmers and funeral directors in this state under this
17 chapter. Three of the members shall have been actively engaged
18 in funeral directing in Alabama for the last 10 consecutive
19 years preceding their appointment and shall be licensed
20 funeral directors of this state, under this chapter, and, at
21 the time of their appointment to the board, shall be operators
22 of funeral establishments in this state. If the license of a
23 member of the board as a funeral director or embalmer should
24 be revoked or suspended, such member shall automatically, by
25 reason of such revocation or suspension, become ineligible to

1 serve as a member of the board, and a new member, properly
2 qualified, shall be selected in the same manner provided for
3 appointment to the board. Should a member fail to qualify
4 after appointment, then he or she shall automatically become
5 ineligible to serve as a member of the board, and a new
6 member, properly qualified, shall be appointed and shall serve
7 the remainder of the term of the member so terminated. Each
8 member of the board shall remain an active practicing funeral
9 director or embalmer and funeral establishment operator during
10 his or her tenure of service on the board. Each member may
11 serve not more than four consecutive two-year terms. In no
12 event shall more than one member of the board reside in one
13 district. At each meeting where nominations are made for
14 members of the board, only one licensed funeral director or
15 licensed embalmer of each establishment shall have the right
16 to vote for nominees.

17 "(e) Any board member who is elected to the
18 International Conference of Funeral Service Examining Board,
19 upon his or her election, shall begin to serve the state board
20 in an ex officio capacity only, for the duration of his or her
21 international conference board term. A member, properly
22 qualified, shall be selected in the same manner provided for
23 appointment to the state board and shall serve the remainder
24 of the term of the member elected to the international
25 conference board.

1 "§34-13-22.

2 "The Alabama Board of Funeral Service shall hold not
3 less than one meeting quarterly for the purpose of examining
4 applicants for licenses, such meeting to be held at such time
5 and place as the board may determine after notice of such
6 meeting has been given in the manner prescribed herein at
7 least 15 days prior to such meeting. The board shall not have
8 power to delegate to any person who is not a member of the
9 board the authority to conduct or administer an examination
10 for a license. The board may hold such other meetings as it
11 may deem necessary. Five or more members shall comprise a
12 quorum. The board shall not meet on the premises of any
13 embalming school or college of mortuary science; and, if any
14 such meeting is held, all the proceedings of such meeting
15 shall be void. If any application for license under this
16 chapter is pending, the applicant or applicants shall be
17 afforded the right to take the examination required hereunder
18 at the date and place of such quarterly meeting.

19 "§34-13-23.

20 "(a) (1) The board appointed under this chapter and
21 each successor thereto is authorized to select from its own
22 membership a chair and to adopt and promulgate such rules and
23 regulations for the transaction of its business and for the
24 betterment and promotion of the standards of service and
25 practice to be followed in the funeral service profession in

1 the State of Alabama as it may deem expedient and consistent
2 with the laws of this state and for the public good.

3 "(2) The chair shall preside at all meetings of the
4 board unless otherwise ordered, and he shall exercise and
5 perform all duties and functions incident to the office of
6 chair.

7 "(3) The board may select also from its own
8 membership a vice chair, a secretary, and a treasurer. No two
9 offices shall be held by the same person. The chair and vice
10 chair may not be of the same race.

11 "(b) The treasurer shall give bond to the State of
12 Alabama in the sum of ten thousand dollars (\$10,000), and any
13 premium payable for the bond shall be paid from the funds of
14 the board. The bond shall be deposited with the Treasurer of
15 the State of Alabama.

16 "(c) Board members shall be reimbursed for their
17 necessary traveling expenses and the necessary expenses
18 incident to their attendance upon the business of the board,
19 and, in addition thereto, they shall receive the sum of fifty
20 dollars (\$50) per diem for every day not to exceed 20 days per
21 year actually spent by the member upon the business of the
22 board. The board may employ an executive secretary and
23 associate executive secretary who shall each receive and be
24 paid an annual salary to be fixed by the board, but not to
25 exceed the salary level established and paid to cabinet

1 officers in the state government. The salary shall be paid on
2 a monthly basis. In addition, the executive secretary and
3 associate executive secretary shall receive his or her
4 necessary traveling and other incidental expenses as are
5 incurred in the performance of duties, and all expenses, per
6 diem, and compensation shall be paid out of the receipts of
7 the board. At no time shall the operation of the board be an
8 expense to the state, and at no time shall expenses of the
9 board exceed the receipts of the board.

10 "(d) The executive secretary of the board shall have
11 complete supervision and be held responsible for the direction
12 of the office of the board, shall have supervision over field
13 inspection and enforcement of this chapter, and shall be
14 responsible and answerable to the board. The associate
15 executive secretary shall assist the executive secretary and
16 perform such other duties as may be assigned to him or her by
17 the board. The executive secretary and associate executive
18 secretary shall not be of the same race.

19 "(e) The executive secretary shall keep a record in
20 which shall be registered the name and business address of
21 every person to whom licenses have been granted in accordance
22 with this chapter, the number and date of the license and the
23 date of each renewal. Upon request to do so, the executive
24 secretary shall supply each person licensed for the practice
25 of embalming and funeral directing with a list of all persons

1 and establishments holding a license under this chapter, then
2 in force, giving the names of the persons, their business
3 addresses, and the numbers of their licenses.

4 "(f) It shall be the duty of the executive secretary
5 to prepare under the direction of the board and cause to be
6 printed all forms required by this chapter to be prescribed by
7 the board. All notices required to be mailed by this chapter
8 shall be directed to the last known post office address of the
9 party to whom the notice is sent.

10 "(g) The executive secretary shall serve at the
11 pleasure of the board and shall perform duties as may be
12 necessary for the proper functioning of the board as the board
13 may determine or as may be prescribed in this chapter. During
14 the employment of the executive secretary he or she may not be
15 employed by any funeral establishment.

16 "(h) All fees and fines received under this chapter
17 shall be paid into a special fund in the State Treasury to be
18 known as the Alabama State Funeral Directors and Embalmers
19 Fund, which is hereby created, for the necessary and proper
20 expenses of the board, and for a reasonable reserve for future
21 use by the board. All moneys in the fund are hereby
22 appropriated, as a continuing appropriation, to the Alabama
23 Board of Funeral Service to be used for carrying out this
24 chapter.

1 "(i) Each member of the board, the executive
2 secretary, the associate executive secretary, and designated
3 employees of the board appropriately identified are authorized
4 at any given time on complaint or for inspection purposes to
5 enter the office, premises, establishment, or place of
6 business of any funeral service licensee in the State of
7 Alabama or any office, premises, establishment, or place where
8 the practice of funeral service is carried on, or where the
9 practice is advertised as being carried on, for the purpose of
10 inspecting the office, premises, or establishment and for the
11 purpose of inspecting the license and registration of any
12 funeral service licensee and apprentice trainee operating
13 therein.

14 "(j) All members of the board or designated
15 employees of the board are hereby authorized to serve and
16 execute any process issued by any court under this chapter and
17 to serve and execute any papers or process issued by the board
18 or any officer or member thereof under authority of this
19 chapter.

20 "(k) The board may employ clerical assistants and
21 employees or other help as may be necessary to carry out this
22 chapter, and the terms and conditions of employment shall be
23 determined by the board. The board may establish and equip an
24 office from which this chapter may be carried out.

25 "§34-13-26.

1 "(a) The board has the power to adopt and enforce
2 for the protection of the public health, safety, and welfare
3 reasonable rules and regulations.

4 "(b) The rules and regulations of the board shall
5 not become effective until they have been published and
6 discussed at a public hearing and have been filed in the
7 office of the Secretary of State; and, when so filed, such
8 rules and regulations shall be in full force and have the
9 effect of law. The board shall mail notice of such hearing to
10 each licensee under this chapter 15 days before the date of
11 such hearing.

12 "(c) All rules and regulations adopted by the board
13 shall be referenced to the section or sections of this chapter
14 which set forth the legislative standard which it interprets
15 or to which it applies. Every rule and regulation shall be in
16 writing, promulgated by an order, state its effective date, be
17 indexed in a permanent book which shall be a permanent record,
18 and a true copy shall be filed in the office of the Secretary
19 of State of Alabama. A copy of every order promulgating a
20 rule, regulation, or other order containing a requirement of
21 general application shall be mailed to each licensee by first
22 class mail. The failure of a licensee to receive a copy of the
23 rule, regulation, or order shall not exempt or excuse him or
24 her from the duty of compliance with the valid rules,
25 regulations, or orders lawfully issued.

1 "(d) The board shall have power to hold hearings,
2 conduct investigations, subpoena witnesses, administer oaths,
3 and take testimony in order to carry out this chapter.

4 "(e) A court of competent jurisdiction, upon
5 application of the board, may restrain violations or refusals
6 to comply with this chapter or the regulations of the board.

7 "(f) Any person, including a member of the board,
8 may initiate a complaint against a licensee of the board by
9 filing with the board a written complaint on a form prescribed
10 by the board.

11 "(1) Upon receipt of a properly verified complaint,
12 the board shall send a copy of the complaint to the affected
13 licensee by certified mail to the address of such licensee
14 appearing on record with the board. The licensee shall answer
15 the complaint in writing within 20 days after receipt of the
16 complaint. The licensee shall mail a copy of his or her
17 response to the board and the complainant. Upon receipt of the
18 response of the licensee or lapse of 20 days, the board may
19 investigate a complaint that appears to show the existence of
20 any of the causes or grounds for disciplinary action pursuant
21 to this chapter. Upon finding reasonable cause to believe that
22 the charges are not frivolous, unfounded, or filed in bad
23 faith, the board may cause a hearing to be held, at a time and
24 place fixed by the board, regarding the charges. If a hearing
25 is held, the board shall order the licensee to appear and show

1 cause why he or she should not be disciplined for a violation
2 of this chapter.

3 "(2) The board shall give the complainant and the
4 affected licensee 20 days' notice of any hearing upon a
5 complaint. Such notice shall be by United States certified
6 mail.

7 "(3) Any party appearing before the board may be
8 accompanied by counsel.

9 "(4) Before commencing a hearing, the chair or a
10 designee of the board shall determine if all parties are
11 present and ready to proceed. If the complainant does not
12 attend a hearing and does not show good cause for his or her
13 absence, the complaint shall be summarily dismissed and all
14 fees and expenses relating to the convening of the hearing
15 shall be charged to the complainant. If an affected licensee
16 does not appear for a hearing and does not show good cause for
17 his or her absence, the licensee shall be presumed to have
18 waived his or her right to appear before the board and be
19 heard.

20 "(5) Upon a determination by the chair or designee
21 that all parties are ready to proceed, the hearing shall be
22 called to order. The complainant and the licensee may offer
23 opening statements and the board may order the sequestration
24 of nonparty witnesses.

1 "(6) After opening statements, the complainant shall
2 present his or her case and the licensee, any counsel, and any
3 member or designee of the board may ask questions of
4 complainant witnesses.

5 "(7) After the complainant has completed presenting
6 his or her case, the licensee shall present his or her case
7 and the complainant, any counsel, and any member or designee
8 of the board may ask questions of licensee witnesses.

9 "(8) After both sides have completed their
10 presentations, closing statements may be given by the
11 complainant and the licensee.

12 "(9) At the conclusion of the hearing, the board may
13 render an immediate decision or take the case under advisement
14 for further deliberation. A decision of the board shall be
15 rendered within 90 days after the hearing and a copy of that
16 decision shall be mailed to the last known business or
17 residence address of the complainant and the licensee.

18 "(g) The board may file a formal complaint against a
19 licensee and may temporarily suspend a license simultaneously
20 with the institution of proceedings under this section,
21 without a hearing, if the board finds that the evidence
22 supporting the determination is clear, competent, and
23 unequivocal and that the continuation of the licensee to
24 practice would constitute a danger to public health or safety.

25 "§34-13-50.

1 "The Alabama Board of Funeral Service shall
2 recognize and approve and accept applicants for examination
3 from only those established embalming schools or colleges
4 which are recognized by the board. The board shall recognize
5 and approve any embalming school or college approved by the
6 American Board of Funeral Service Education, and any
7 additional embalming schools or colleges which offer courses
8 of study which generally include the subjects set out in
9 Section 34-13-94. The Alabama Board of Funeral Service shall
10 not examine or issue an embalmer's license to any person who
11 does not hold a certificate of graduation from an embalming
12 school or college meeting the criteria or standards as defined
13 in this section. The board may not examine or issue a funeral
14 director's license to any person who does not hold a
15 certificate of graduation from an embalming school or college
16 meeting the criteria or standards defined in this section.

17 "§34-13-51.

18 "(a) The board may, but shall not be required to,
19 recognize and issue, without examination and upon payment of a
20 fee not in excess of five hundred dollars (\$500) for each
21 license, a reciprocal license for the practice of funeral
22 directing or embalming to any person licensed as a funeral
23 director or embalmer by any state, if the board makes an
24 individual determination that the qualifications of the
25 applicant meet or exceed the minimum qualifications required

1 for funeral directors or embalmers in this state and that a
2 written examination of such applicant would be superfluous.

3 "(b) Applications shall be made on forms prescribed
4 and furnished by the board. An applicant holding a funeral
5 director or embalmer license from another state, and applying
6 for a funeral director or embalmer license in Alabama shall be
7 considered for licensing by reciprocity.

8 "(c) The board, at the time of the application,
9 shall make a reasonable determination that the applicant is a
10 legal resident of the United States or legally present in this
11 state. The board reserves the right to require applicants for
12 reciprocity to submit to a personal interview or a written
13 examination relating to the law as it pertains to the
14 regulation of the funeral service profession in Alabama.

15 "(d) The board shall issue a special work permit to
16 a qualified funeral director or embalmer when the board
17 determines that the applicant satisfies all requirements for
18 reciprocity and a fee, not exceeding one hundred dollars
19 (\$100), is received by the board. A special work permit shall
20 expire on the date of the next regular board meeting occurring
21 after issuance.

22 "§34-13-52.

23 "(a) Licenses under this chapter shall be granted to
24 individuals upon the qualification and successful examination
25 of the individual applicant and shall specify the name to whom

1 it is issued. A license granted under this chapter shall be on
2 public display.

3 "(b) A funeral establishment license issued under
4 this chapter shall include the name of the funeral
5 establishment, the name of the managing funeral director, the
6 name of the managing embalmer, and the certificate of
7 authority license number, if applicable. The license shall be
8 on public display.

9 "(c) Every license issued under this chapter shall
10 be signed by the chair and executive secretary and shall be
11 displayed in the place of business or employment of the
12 licensee.

13 "(d) Any person engaged in the business, profession,
14 or practice of funeral directing shall do each of the
15 following:

16 "(1) Posses on his or her person, or be able to
17 promptly produce, a legible and current Alabama funeral
18 director's wallet license certificate when performing the
19 duties of a funeral director.

20 "(2) Upon the request of a board member, the
21 executive secretary, the associate executive secretary, or a
22 designated and appropriately identified employee of the board,
23 promptly produce his or her legible and current Alabama
24 funeral director wallet license certificate.

1 "(e) Any person engaged in the business, profession,
2 or practice of embalming shall do each of the following:

3 "(1) Posses on his or her person, or be able to
4 promptly produce, a legible and current Alabama embalmer's
5 wallet license certificate when performing the duties of an
6 embalmer.

7 "(2) Upon the request of a board member, the
8 executive secretary, the associate executive secretary, or a
9 designated and appropriately identified employee of the board,
10 promptly produce his or her legible and current Alabama
11 embalmer wallet license certificate.

12 "§34-13-53.

13 "(a) Every licensed funeral director, every licensed
14 embalmer, and every licensed operator shall pay annually a fee
15 for renewal of his or her license. The renewal fees shall be
16 set by the board at a rate not to exceed one hundred fifty
17 dollars (\$150) for licensed embalmers and funeral directors
18 and five hundred dollars (\$500) for licensed operators.

19 "(b) All licenses granted under this chapter shall
20 expire on October 1, following their issuance or renewal, and
21 shall become invalid unless renewed as provided in this
22 section. There shall be no proration of licenses.

23 "(c) The board shall mail on or before August 1 of
24 each year to each licensed funeral director, to each licensed
25 embalmer, and to each licensed operator, addressed to him or

1 her at his or her last address, a notice that his or her
2 renewal fee is due and payable and that, if such fee is not
3 paid by October 1, the license shall lapse.

4 "(d) At the time, or before, a licensee changes
5 place of employment, residence address, or makes any other
6 change in status which is of record at the board office, the
7 licensee shall report such change of status, on a form
8 provided by the board, to the executive secretary.

9 "§34-13-55.

10 "(a) When a licensee, for any reason, has allowed
11 his or her license to lapse, the board may reinstate the
12 license if application for reinstatement is made within a
13 period of six months from the lapse and is accompanied by
14 payment of all penalties and lapsed fees, from the time of the
15 lapse to date of reinstatement. The penalties to be paid to
16 the board shall not exceed one hundred dollars (\$100) to
17 reinstate licenses which have lapsed.

18 "(b) After the six-month period has elapsed, such
19 license may be reinstated only by complying with the
20 provisions relating to the issuance of an original license in
21 addition to payment of all lapsed fees and penalties.

22 "§34-13-56.

23 "(a) The board may refuse to grant, refuse to renew,
24 or suspend or revoke a license after proper hearing and notice

1 to the licensee, upon the licensee's being found guilty of any
2 of the following:

3 "(1) Conviction of a crime involving moral
4 turpitude.

5 "(2) Unprofessional conduct, which is defined to
6 include any of the following:

7 "a. Misrepresentation or fraud in the conduct of the
8 business or the profession of a funeral director or embalmer.

9 "b. False or misleading advertising as a funeral
10 director or embalmer or knowingly engaging in any advertising
11 which is misleading or inaccurate in any material particular.

12 "c. Solicitation of dead human bodies by the
13 licensee, his or her agents, assistants, or employees, from
14 medical professionals or clergy, whether the solicitation
15 occurs after death or while death is impending.

16 "d. Employment by the licensee of a person or
17 persons to be used for the purpose of obtaining or soliciting
18 funeral directing or embalming business.

19 "e. Employment directly or indirectly of any
20 apprentice, agent, assistant, embalmer, employee, or other
21 person, on part or full time or on commission, for the purpose
22 of calling upon individuals or institutions where a death has
23 occurred or is imminent by whose influence dead human bodies
24 may be turned over to a particular funeral director or
25 embalmer or funeral establishment, or both.

1 "f. The buying of business by the licensee, his or
2 her agents, assistants, or employees.

3 "g. Gross immorality.

4 "h. Aiding or abetting an unlicensed person to
5 practice funeral directing or embalming.

6 "i. Using profane, indecent, or obscene language in
7 the presence of a dead human body, or within the immediate
8 hearing of the family or relative of a deceased whose body has
9 not yet been interred or otherwise disposed of.

10 "j. Solicitation or acceptance by a licensee of any
11 commission or bonus or rebate in consideration of recommending
12 or causing a dead human body to be disposed of in any
13 mausoleum or cemetery.

14 "k. Any violation of this chapter.

15 "l. Any violation of state law or municipal or
16 county ordinance or regulation affecting the handling,
17 custody, care, or transportation of dead human bodies.

18 "m. Fraud or misrepresentation in obtaining a
19 license.

20 "n. Refusing to promptly surrender the custody of a
21 dead human body, upon the express order and payment for
22 services rendered of the person lawfully entitled to the
23 custody thereof.

1 "o. Performing services in a professional capacity
2 as a funeral director or embalmer, or both, for any unlicensed
3 funeral establishment operating in violation of this chapter.

4 "p. Being intoxicated or under the influence of
5 illegal drugs while on duty at a funeral establishment.

6 "q. Willfully retaining or willfully failing to
7 account for any property of a decedent.

8 "r. Knowingly and willfully signing a certificate as
9 having embalmed or prepared a body for burial when, in fact
10 the services were not performed by the licensee.

11 "s. Failure to give full cooperation to the board or
12 its designees, agents, or other representatives in the
13 performance of official duties of the board. Failure to give
14 full cooperation includes, but is not limited to, any of the
15 following:

16 "(i) Not furnishing any relevant papers or documents
17 requested by or for the board.

18 "(ii) Not furnishing, in writing, an adequate
19 explanation relating to a matter contained in a complaint
20 filed with the board against the licensee.

21 "(iii) Not responding to a subpoena issued by the
22 board, without good cause shown, whether or not the licensee
23 is the party charged in any proceeding before the board.

24 "(iv) Not providing reasonable access to the board
25 or an authorized agent or representative of the board for the

1 performance of reviews or inspections at facilities or places
2 utilized by the licensee in the practice of funeral service or
3 funeral directing or in performing any other activity
4 regulated by the board.

5 "(v) Failing to provide information within a
6 specific time as required by the board or an authorized agent
7 or representative of the board.

8 "(vi) Failing to cooperate with the board or an
9 authorized agent or representative of the board in the
10 investigation of any alleged misconduct or interfering with a
11 board investigation through the willful misrepresentation of
12 facts.

13 "(vii) Deceiving or attempting to deceive the board
14 regarding any matter under investigation, including the
15 altering or destroying of any records.

16 "(viii) Failure, without good cause, to cooperate
17 with any request from the board to appear before the board.

18 "(ix) Violating any statute, ordinance, or rule of
19 the state or any board, agency, or political subdivision of
20 the state affecting the registration of deaths or the
21 handling, custody, care, or transportation of dead human
22 bodies.

23 "(x) Violating any statute, ordinance, or rule of
24 the state or any board, agency, or political subdivision of
25 the state affecting the registration of deaths or the

1 handling, custody, care, or transportation of dead human
2 bodies.

3 "(xi) Demonstrating bad faith, incompetence, or
4 untrustworthiness or dishonest, fraudulent, or improper
5 dealing or any other violation of this chapter or any rule
6 promulgated by the board or promulgated by the Federal Trade
7 Commission relative to the practice of funeral service or
8 funeral directing.

9 "(b) In addition to the disciplinary actions
10 authorized in subsection (a), the board may levy and collect
11 administrative fines for violations of this chapter or the
12 rules or regulations of the board in an amount not less than
13 five hundred dollars (\$500) nor more than two thousand five
14 hundred dollars (\$2,500) for each violation.

15 "§34-13-70.

16 "(a) No person shall engage in, or attempt to engage
17 in, the practice or profession or business of a funeral
18 director unless licensed to do so by the Alabama Board of
19 Funeral Service. The board hereby is granted authority to
20 issue license to funeral directors.

21 "(b) Any person desiring to engage in the business,
22 profession, or practice of funeral director shall make
23 application to the board and shall accompany his or her
24 application by a fee to be established by the board, not to
25 exceed one hundred fifty dollars (\$150), whereupon the board

1 shall fix the time and place for the examination of the
2 applicant and shall notify the applicant thereof.

3 "(c) In addition, the board shall establish and
4 charge a reasonable examination fee, based on actual costs,
5 for each applicant who sits for an examination. In no event
6 shall the fee exceed fifty dollars (\$50) above the actual cost
7 of preparing and administering such exam.

8 "§34-13-72.

9 "An applicant for a funeral director's license is
10 entitled to an examination if he or she satisfies all of the
11 following:

12 "(1) Is a citizen of the United States or legally
13 present in this state.

14 "(2) Is at least 18 years of age.

15 "(3) Has had practical experience as an apprentice
16 for not less than two years within a period of three
17 consecutive years, excluding time lost by interruptions caused
18 by the active duty of the applicant in the military service of
19 the United States or its allies during war or national
20 emergency, and excluding time lost by interruptions which the
21 board deems excusable as caused by circumstances beyond the
22 control of the applicant.

23 "(4) Has completed apprenticeship not more than two
24 years prior to taking the examination, excluding time lost
25 under the circumstances mentioned in subdivision (3).

1 "(5) Has completed a course of instruction in an
2 accredited mortuary or funeral service school or college which
3 has been approved by the board pursuant to Section 34-13-50,
4 or has completed a bachelor's degree program from an
5 accredited school.

6 "§34-13-73.

7 "(a) The applicant for a funeral director's license,
8 before the application is granted, shall successfully pass an
9 examination upon, but not limited to, the following subjects:
10 Funeral directing, the manners in which death may be
11 determined, the laws governing the preparation and disposal of
12 human dead bodies and the shipment of bodies dying from
13 infectious or contagious diseases, and local health and
14 sanitary ordinances in relation to funeral directing. The
15 examination shall be prepared and graded as prescribed by rule
16 of the board. The board may review and adopt, in whole or in
17 part, examination questions, forms, examinations, and passing
18 criteria proposed by the American Board of Funeral Service
19 Education, or a successor organization, and may use the
20 uniform nationwide conditions of the International Conference
21 of Funeral Service Examining Boards, or other organization
22 approved by the board.

23 "(b) The board shall examine applicants for a
24 funeral director's license in all of the following subjects:

25 "(1) Mortuary management and administration.

1 "(2) Mortuary law.

2 "(3) Basic accounting principles.

3 "(4) Funeral directing.

4 "(5) Other courses of instruction in fundamental
5 subjects as may be prescribed by the board.

6 "(c) All examination papers shall be kept on file by
7 the board for at least three years.

8 "(d) To constitute a passing grade, an applicant
9 shall earn an average score of at least 75 percent.

10 "(e) If the board is satisfied that an applicant has
11 the requisite qualifications to practice the occupation of
12 funeral directing, a license shall be issued authorizing the
13 applicant to practice such occupation until October 1 of that
14 year, at which time the license may be renewed as prescribed
15 in this chapter.

16 "§34-13-74.

17 "(a) When a licensed funeral director dies leaving a
18 licensed funeral business with no licensed funeral director,
19 the surviving spouse, or a surviving child of legal age, shall
20 have the right to make application for examination as a
21 funeral director. The application shall be in writing, on a
22 form prescribed by the board, and shall state the facts
23 pertaining to the case. The board may certify the applicant
24 for the examination prescribed for funeral directors, in which

1 event the requirements with respect to prior experience and
2 apprenticeship shall be waived.

3 "(b) When a licensed funeral director dies leaving a
4 licensed funeral business with no licensed funeral director,
5 the board may issue a special operating permit to the operator
6 of such licensed funeral business for a period of 12 months,
7 with the board having the right to extend the permit an
8 additional reasonable time to afford such operator the
9 opportunity of obtaining a licensed funeral director for such
10 business. The operator shall be required to pay a fee for the
11 issuance of the special operating permit in an amount not
12 exceeding one hundred dollars (\$100).

13 "(c) All human remains embalmed for a funeral
14 establishment operating under a special operating permit and
15 all funeral directing operations carried on under the permit
16 shall be in conformance with all the requirements of this
17 chapter which are not in conflict with this section.

18 "§34-13-90.

19 "(a) No person shall follow, engage in, or hold
20 himself or herself out as engaged in the practice as an
21 embalmer unless licensed to do so by the Alabama Board of
22 Funeral Service. The board is granted authority to issue
23 licenses to embalmers.

24 "(b) All persons shall qualify for examination in
25 accordance with this chapter and shall be licensed as an

1 embalmer only after due examination by the board and the
2 payment of an examination and license fee to be established by
3 the board, not to exceed five hundred dollars (\$500).

4 "(c) In addition, the board shall establish and
5 charge a reasonable examination fee, based on actual costs,
6 for each applicant who sits for an examination. In no event
7 shall the fee exceed fifty dollars (\$50) above the actual cost
8 of preparing and administering such exam.

9 "§34-13-94.

10 "(a) The board shall examine applicants for an
11 embalmer's license in all of the following subjects:

12 "(1) Mortuary management and administration.

13 "(2) Legal medicine and toxicology.

14 "(3) Public health, hygiene, and sanitary science.

15 "(4) Mortuary science, to include embalming
16 technique, in all aspects; chemistry of embalming, color
17 harmony; discoloration, its causes, effect, and treatment;
18 treatment of special cases; restorative art; funeral
19 management; and professional ethics.

20 "(5) Anatomy and physiology.

21 "(6) Chemistry, organic and inorganic.

22 "(7) Pathology.

23 "(8) Bacteriology.

24 "(9) Sanitation and hygiene.

25 "(10) Public health regulations.

1 "(11) Other courses of instruction in fundamental
2 subjects as may be prescribed by the board.

3 "(b) All examination papers shall be kept on file by
4 the board for at least three years.

5 "(c) To constitute a passing grade, an applicant
6 shall earn an average score of at least 75 percent.

7 "(d) The board may issue an embalmer's license to an
8 applicant who receives a passing grade on a recognized
9 national embalmer's examination approved by the board.

10 "(e) If the board is satisfied that the applicant
11 has the requisite qualifications to practice the occupation of
12 embalming, a license shall be issued to him or her authorizing
13 him or her to practice such occupation until October 1 of that
14 year, at which time the license may be renewed as prescribed
15 in this chapter.

16 "§34-13-111.

17 "(a) No funeral establishment or branch thereof for
18 the preparation, disposition, and care of dead human bodies
19 shall be opened or maintained unless duly licensed by the
20 board. No funeral establishment or branch shall be moved
21 without obtaining a new funeral establishment license from the
22 board.

23 "(b) The board shall set a fee, not exceeding one
24 hundred fifty dollars (\$150), that shall be in addition to the
25 license fee for the first inspection of any funeral

1 establishment seeking a license under Section 34-13-72 made
2 for the purpose of determining whether such funeral
3 establishment has fulfilled the requirements for licensure
4 pursuant to this chapter. The board shall set a fee, not
5 exceeding one hundred fifty dollars (\$150), for each
6 reinspection necessitated by failure of any funeral
7 establishment to pass such first inspection. The board, or a
8 representative of the board, shall annually conduct a minimum
9 of one unannounced inspection of funeral establishments and
10 branches, with an inspection fee of not more than one hundred
11 dollars (\$100). The inspection fee shall be submitted to the
12 board within 45 days after the inspection. Any funeral
13 establishment that does not submit the inspection fee within
14 45 days shall be charged a late penalty fee, as established by
15 the board. A funeral establishment, or branch thereof, that is
16 used for the preparation, disposition, and care of dead human
17 bodies shall meet and conform to this chapter and to such
18 other lawful standards and requirements as may be determined
19 by rule of the board in furtherance of this chapter; and, for
20 failure to do so, the board may revoke such license in
21 accordance with the procedure set forth in this chapter.

22 "(c) Applications for transfer of a license to
23 another location in the same county shall be made upon blanks
24 furnished by the board and shall be accompanied by a fee of
25 not more than seventy-five dollars (\$75). The fee for a new

1 branch or location for a funeral establishment shall be \$250.
2 Any change in ownership shall be immediately reported to the
3 board.

4 "§34-13-113.

5 "(a) Application for a license to operate a funeral
6 establishment shall be made in writing on a form provided by
7 the board. The application shall be verified by the applicant
8 or, if the applicant is a corporation, firm, or other
9 organization, by an officer or member thereof, and shall be
10 accompanied by an application fee established by the board not
11 to exceed five hundred dollars (\$500). The application shall
12 disclose all of the following:

13 "(1) The name and address of the establishment.

14 "(2) That the establishment is operated by a
15 licensed funeral director and a licensed embalmer or a person
16 licensed both as a funeral director and embalmer.

17 "(3) A description and photographs of the buildings,
18 equipment, and facilities of the establishment.

19 "(4) That the establishment has a sanitary, properly
20 equipped embalming room, a room suitable for public viewing or
21 other funeral services that is able to accommodate a minimum
22 of 100 people, an office for arrangement conferences with
23 relatives or authorized representatives, and a display room
24 containing a stock of adult caskets and funeral supplies
25 displayed in full size, cuts, photographs, or electronic

1 images. At no time shall less than eight different adult full
2 size caskets and at least one operating and properly licensed
3 funeral coach or hearse equipped for transporting human
4 remains in a casket or urn be on the premises.

5 "(5) Such other information as may be required by
6 the board.

7 "(b) Upon receipt of the application, the board
8 shall make inspection of the funeral establishment. If the
9 board determines that the establishment meets the
10 qualifications prescribed by law, it shall issue a license to
11 operate a funeral establishment.

12 "(c) Application for a license to operate a mortuary
13 service shall be made in writing on a form provided by the
14 board. The application shall be verified by the applicant or,
15 if the applicant is a corporation, firm, or other
16 organization, by an officer or member thereof, and shall be
17 accompanied by an application fee established by the board not
18 to exceed five hundred dollars (\$500). The application shall
19 disclose all of the following:

20 "(1) The name and address of the proposed mortuary
21 service.

22 "(2) That the mortuary service applicant is operated
23 by a licensed embalmer or a person licensed both as a funeral
24 director and embalmer.

1 "(3) A description and photographs of the buildings,
2 equipment, and facilities of the mortuary service applicant.

3 "(4) That the mortuary service applicant has a
4 sanitary, properly equipped embalming room.

5 "(5) Such other information as may be required by
6 the board.

7 "(d) Upon receipt of the application, the board
8 shall make inspection of the premises of the mortuary service
9 applicant. If the board determines that the mortuary service
10 applicant meets the qualifications prescribed by law, it shall
11 issue a license to operate a mortuary service.

12 "§34-13-114.

13 "(a) An operator of a funeral establishment licensed
14 under subsections (a) and (b) of Section 34-13-113 who desires
15 to change the name of the establishment may have his or her
16 license reissued, in the changed name, upon application to the
17 board and payment of a fee not exceeding seventy-five dollars
18 (\$75).

19 "(b) An operator of a mortuary service licensed
20 under subsections (c) and (d) of Section 34-13-113 who desires
21 to change the name of the mortuary service may have his or her
22 license reissued, in the changed name, upon application to the
23 board and payment of a fee set by the board.

24 "§34-13-115.

1 "(a) The board may revoke, suspend, or refuse to
2 renew a license issued to an operator of a funeral
3 establishment or mortuary service as provided in this chapter.

4 "(b) If, upon a complaint made to it or otherwise,
5 the board has reason to believe that the operator of a funeral
6 establishment or mortuary service has failed to comply with
7 this chapter or the regulations of the board, it shall conduct
8 an investigation. If it appears to the board that there is
9 reasonable ground to believe that the operator has failed so
10 to comply, it shall conduct a hearing on the matter. Notice of
11 the time and place of the hearing, setting forth the respects
12 in which failure to comply is charged, shall be sent to the
13 operator no later than 15 days prior to the date set for the
14 hearing. The operator may have the assistance of counsel at
15 the hearing.

16 "(c) If, upon the hearing, the board finds that the
17 operator has failed to comply with this chapter or the
18 regulations of the board, it may revoke, suspend, or refuse to
19 renew the license.

20 "§34-13-116.

21 "Any person, firm, partnership, society, group, or
22 corporation who has control of a funeral home, mortuary,
23 chapel, funeral establishment, or mortuary service and fails
24 to register same according to this chapter, upon conviction,
25 may be fined not less than five hundred dollars (\$500) nor

1 more than two thousand five hundred dollars (\$2,500) for each
2 violation, and each day that the funeral home, mortuary,
3 chapel, funeral establishment, or mortuary service is operated
4 shall be deemed to be a separate and distinct violation of
5 this chapter.

6 "§34-13-120.

7 "(a) It shall be unlawful for any person, firm,
8 corporation, association, or entity to operate a crematory or
9 practice cremation without the crematory being licensed as a
10 funeral establishment in accordance with this chapter.

11 "(b) Any funeral establishment performing cremation
12 services shall certify by affidavit to the board that any
13 cremationist conducting cremations has received adequate and
14 appropriate training or experience in the practice of
15 cremation.

16 "(c) The board shall adopt and enforce rules and
17 regulations as may be reasonable and necessary for the
18 operation of crematories to protect the health, welfare, and
19 safety of the people of this state.

20 "(d) The board shall inspect the records and
21 premises of any funeral establishment operating a crematory.
22 In making inspections, the board shall have access to all
23 records, the crematory building, the cremation chambers or
24 furnaces, and the storage areas for human remains before and
25 after cremation, during regular office hours or the hours the

1 crematory is in operation. No prior notification of the
2 inspection is required to be given to the funeral
3 establishment. If any funeral establishment performing
4 cremation services fails to allow an inspection or any part
5 thereof, it shall be grounds for the suspension or revocation
6 of a license or other disciplinary action against the
7 licensee, as the board may deem reasonable and necessary to
8 the extent of the law. The board shall conduct annually a
9 minimum of one unannounced inspection of each licensed funeral
10 establishment performing cremation services.

11 "(e) Each funeral establishment performing cremation
12 services shall keep records as required by the board to assure
13 compliance with all laws relating to the disposition of human
14 remains and shall file annually with the board a report in the
15 form prescribed by the board, describing the operations of the
16 licensee, including the number of cremations made, the
17 disposition thereof, and any other information as the board
18 may, from time to time, require.

19 "(f) Each funeral establishment performing cremation
20 services shall report to the board any maintenance or
21 inspections performed within 30 days of the maintenance or
22 inspection.

23 "(g) A funeral establishment performing cremation
24 services shall be subject to all local, state, and federal
25 health and environmental protection requirements and shall

1 obtain all necessary licenses and permits from the Alabama
2 Board of Funeral Service, the federal and state Departments of
3 Health and Human Services, and the state and federal
4 Environmental Protection Agencies, or other appropriate local,
5 state, or federal agencies.

6 "(h) No crematory facility licensed by the board may
7 be used for the cremation of deceased animals.

8 "§34-13-130.

9 "(a) Every person desiring to engage as an
10 apprentice shall make application as a funeral director's
11 apprentice or an embalmer's apprentice to the board upon a
12 form provided by the board. The application shall state that
13 the applicant is over the age of 16, holds a high school
14 certificate or the equivalent, or is currently enrolled and
15 actively working toward graduation from an accredited high
16 school and is of good moral character. The application shall
17 be verified by the oath of applicant and be accompanied by a
18 fee to be established by the board, not to exceed twenty
19 dollars (\$20). The executive secretary, whenever it appears to
20 him or her that no reason exists for the denial of an
21 application and that the application is regular upon its face,
22 may issue to the applicant a certificate of apprenticeship,
23 without submitting the application to the board. If, however,
24 any doubt exists as to the qualifications of the applicant,
25 the application shall be submitted to the board and may be

1 accepted or rejected by a majority of the board. The period of
2 apprenticeship of a funeral director's apprentice or an
3 embalmer's apprentice must be performed in Alabama under the
4 supervision of a funeral director or embalmer, respectively,
5 licensed by the board.

6 "(b) The regular course of apprenticeship shall be
7 two years, but the apprentice is entitled to two weeks time
8 off each year, without leave of absence from the board."

9 Section 2. All laws or parts of laws which conflict
10 with this act are repealed and specifically Section 34-13-28,
11 Code of Alabama 1975, providing for the reporting of receipts
12 and disbursements of the board to the Governor and the
13 Legislature, and Article 4, consisting of Sections 34-13-150,
14 34-13-151, and 34-13-152, of Chapter 13, Title 34, Code of
15 Alabama 1975, relating to donor eye enucleation licenses, are
16 repealed.

17 Section 3. The provisions of this act are severable.
18 If any part of this act is declared invalid or
19 unconstitutional, that declaration shall not affect the part
20 which remains.

21 Section 4. This act shall become effective October
22 1, 2011, following its passage and approval by the Governor,
23 or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB94

Senate 27-APR-11

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Passed: 02-JUN-11

By: Senator Keahey