

BEFORE THE BOARD OF FUNERAL SERVICE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed amendment ) NOTICE OF PUBLIC HEARING  
of ARM 24.147.302 definitions, 24.147.401, ) ON PROPOSED AMENDMENT,  
24.147.402 and 24.147.403 substantive ) ADOPTION, AND REPEAL  
rules, 24.147.501, 24.147.502 and )  
24.147.505 licensing, 24.147.901 mortuary )  
requirements, 24.147.1101, 24.147.1114 )  
and 24.147.1115 crematory rules, )  
24.147.1301, 24.147.1302, 24.147.1304, )  
24.147.1305, 24.147.1312, 24.147.1313, )  
and 24.147.1314 cemetery regulation rules, )  
24.147.1501 and 24.147.1503 branch )  
facilities and prearranged funeral )  
agreements, 24.147.2108 continuing )  
education, 24.147.2401 complaint filing, )  
the proposed adoption of NEW RULE I fee )  
abatment, NEW RULE II renewal of )  
cemetery licenses, and the proposed repeal )  
of 24.147.1311 cemetery authority rules )

TO: All Concerned Persons

1. On March 30, 2006, at 9:30 a.m., a public hearing will be held in room B-07, of the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (Department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Funeral Service (Board) no later than 5:00 p.m., on March 23, 2006, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail [dlibsdfnr@mt.gov](mailto:dlibsdfnr@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2005 Montana Legislature enacted Chapter 467, Laws of 2005 (House Bill 182), an act generally revising and consolidating professional and occupational licensing laws and distinguishing between department and board or program duties regarding licensure, examination and fees. The bill was signed by the Governor on April 28, 2005, and became effective on July 1, 2005. The Board determined it is reasonably necessary to amend certain existing rules to timely implement the 2005 legislation and in keeping with the 2005 Montana Legislature's intent to simplify and

standardize the licensure and renewal processes for all boards and licensees within the Department.

It is reasonable and necessary to amend the rules throughout to achieve consistent use of terminology within the rules of the Board and also between the Board's and Department's statutes and rules. Amendments to certain catchphrases, as well as grammatical, organizational and formatting changes, are being made to simplify and streamline the Board's rules and to comply with ARM formatting requirements. Where additional specific bases for a proposed action exist, the Board will identify those reasons immediately following that rule. Authority and implementation cites are amended throughout to accurately reflect all statutes implemented through the rules, to provide the complete sources of the Board's rulemaking authority and to delete references to repealed statutes.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.147.302 FUNERAL SERVICE DEFINITIONS As used in this chapter, the following definitions apply:

~~(1) "Cemetery authority" is defined as being the same as "cemetery company" as set forth in 37-19-101, MCA.~~

(9) and (10) remain the same but are renumbered (1) and (2).

(2) through (5) remain the same but are renumbered (3) through (6).

(7) "Permit" as referred to in 37-19-814, MCA, is defined to be synonymous with "license" for purposes of this chapter.

(6) through (8) remain the same but are renumbered (8) through (10).

(11) through (13) remain the same.

AUTH: 37-1-131, 37-19-202, MCA

IMP: 37-19-705, 37-19-814, 37-19-827, 37-19-828, 37-19-829, MCA

REASON: It is reasonably necessary to delete the definition of "cemetery authority" in this rule and replace the term with "cemetery company" throughout the rules to achieve consistent use of the term as defined in 37-19-101, MCA.

24.147.401 FEE SCHEDULE

<del>(1) Morticians, crematory operator, crematory technician application</del>	\$150
<del>(2) Reactivation of inactive license</del>	50
<del>(3) Original mortician license fee</del>	60
<del>(4) Original mortuary license</del>	200
<del>(5) Branch facility application fee (includes original license fee)</del>	200
<del>(6) Intern license</del>	100
<del>(7) Annual renewals</del>	
<del>(a) Funeral director renewal</del>	40
<del>(b) Mortician renewal</del>	125
<del>(c) Inactive status renewal</del>	50

(d) Inactive funeral director renewal	15
(e) Mortuary renewal (includes inspection fee)	200
(f) Branch facility renewal (annual inspection not required)	50
(g) Crematory operator renewal	60
(h) Crematory technician renewal	30
(i) and (j) remain the same but are renumbered (7) and (8).	
(8) Re-examination fee	45
(9) Inspection fee for new facility	200
(10) Re-inspection fee	200
(11) Crematory application fee (includes original license fee)	200
(12) Crematory original inspection fee	200
(13) Crematory renewal	200
(14) Crematory temporary permit	25
(15) Cemetery permit application	200
(16) Cemetery original license (five-year license)	1,000
(17) Cemetery initial inspection fee	200
(18) Cemetery permit renewal fee (five year, includes inspection fee)	1,000
<u>(1) Facility application fees</u>	
<u>(a) Mortuary</u>	<u>\$ 250</u>
<u>(b) Mortuary branch facility</u>	<u>250</u>
<u>(c) Crematory</u>	<u>250</u>
<u>(d) Cemetery</u>	<u>1250</u>
<u>(2) Facility inspection or reinspection fees</u>	
<u>(a) Mortuary</u>	<u>200</u>
<u>(b) Mortuary branch facility</u>	<u>200</u>
<u>(c) Crematory</u>	<u>200</u>
<u>(d) Cemetery</u>	<u>200</u>
<u>(3) Individual application fees</u>	
<u>(a) Mortician</u>	<u>250</u>
<u>(b) Crematory operator</u>	<u>200</u>
<u>(c) Crematory technician</u>	<u>200</u>
<u>(d) Mortician intern</u>	<u>220</u>
<u>(4) Activation of inactive license</u>	
<u>(a) Mortician</u>	<u>100</u>
<u>(b) Crematory operator</u>	<u>50</u>
<u>(c) Crematory technician</u>	<u>50</u>
<u>(5) Facility renewal fees (includes annual inspection)</u>	
<u>(a) Mortuary</u>	<u>300</u>
<u>(b) Mortuary branch facility</u>	<u>50</u>
<u>(c) Crematory</u>	<u>300</u>
<u>(d) Cemetery (five-year renewal)</u>	<u>1000</u>
<u>(6) Individual renewal fees</u>	
<u>(a) Mortician - active</u>	<u>200</u>

<u>(b) Mortician - inactive</u>	<u>100</u>
<u>(c) Crematory operator - active</u>	<u>100</u>
<u>(d) Crematory operator - inactive</u>	<u>50</u>
<u>(e) Crematory technician - active</u>	<u>100</u>
<u>(f) Crematory technician - inactive</u>	<u>50</u>
<u>(9) Jurisprudence reexamination fee</u>	<u>100</u>
<u>(10) All fees are nonrefundable.</u>	

AUTH: 37-1-131, 37-19-202, 37-19-301, 37-19-303, 37-19-304, 37-19-403, 37-19-702, 37-19-808, 37-19-814, 37-19-815, 37-19-816, 37-19-703, MCA  
 IMP: 37-1-134, 37-19-301, 37-19-303, 37-19-304, ~~37-19-306, 37-19-401,~~  
 37-19-402, 37-19-403, 37-19-702, 37-19-703, 37-19-808, 37-19-814, 37-19-815, 37-19-816, MCA

REASON: It is reasonable and necessary for the Board to raise fees to meet the Board's budget for fiscal years (FY) 2006 and 2007. The current budgeted revenue for FY '06 and '07 is \$62,664.00. The current budgeted appropriation is \$81,288.00 for FY '06 and \$82,874.00 for FY '07. The increased budgeted appropriation is due to an increase in rent, salaries, gas, utilities and numerous miscellaneous expenses. At the current rate, the Board would be left with only \$14,555.00 cash balance at the end of FY '07. The proposed fee increases will generate an additional \$23,235.00 annually. The total annual revenue (starting in FY '07) with the increased fees is projected to be \$92,960.00. With this increase, the Board will meet its budget and still have a reasonable cushion should it face any unforeseen legal or other expenses. The proposed fee increases will affect approximately 428 licensees.

24.147.402 MORTICIAN APPLICATIONS (1) Any person applying to the board for permission to take the examination shall present to the board evidence in the form of:

- (a) certified copy of the transcript of completion of 60 semester credit hours or 90 quarter credit hours from ~~an accredited a~~ college or university accredited by a regional accrediting agency recognized by the U.S. Department of Education; ;
  - (b) certified copy of the final transcript from an accredited college of mortuary science accredited by the American Board of Funeral Service or its successor; ;
  - (c) properly completed application form furnished by the ~~board~~ department; ;
- and
- (d) certified copy of the certification form verifying successful completion of ~~the conference of funeral service examining board's~~ International Conference of Funeral Service Examining Board's examination.

(2) All applications for licensure by the board will be considered nonroutine in nature and will be reviewed and approved by the board prior to issuance of the license.

AUTH: 37-1-131, 37-19-202, MCA  
 IMP: 37-19-302, 37-19-303, MCA

REASON: The Board determined it is reasonably necessary to specify which accrediting agencies have been approved by the Board regarding the educational requirements for mortician licensure. This clarification will assist applicants in determining whether their education meets the requirements of the Board.

24.147.403 INSPECTIONS (1) through (4) remain the same.

(5) Reinspection shall be made of a mortuary that does not meet the requirements of the board in ~~ARM 8.30.602 through 8.30.606~~ and 24.147.901.

AUTH: 37-1-131, 37-19-202, 75-10-1006, MCA

IMP: 37-19-403, 75-10-1001, 75-10-1002, 75-10-1003, 75-10-1004, 75-10-1005, 75-10-1006, MCA

REASON: It is reasonable and necessary to delete the references to ARM 8.30.602 through 8.30.606 as these rules were repealed via 2001 legislation transferring the Board from the Department of Commerce to the Department of Labor and Industry.

24.147.501 LICENSURE OF OUT-OF-STATE APPLICANTS (1) Upon payment of the proper license fee, the board may issue a license to a person who, at the time of application, holds a current, active license in good standing, as a funeral director, mortician, or crematory operator, issued by the proper authority of any state. When a person applies for licensure under this provision, the applicant shall provide information from the other state(s), and the board shall determine whether the requirements for obtaining such other license(s) are substantially equivalent to or stricter than the requirements of Montana law, as listed in ARM 24.147.402 and 24.147.1114 and 37-19-302 and 37-19-703, MCA.

(2) through (5) remain the same.

AUTH: 37-1-131, 37-19-202, MCA

IMP: 37-1-304, 37-19-302, 37-19-703, MCA

REASON: It is reasonably necessary to specify the licensure requirements the Board considers when evaluating out-of-state licensure applications. This amendment will assist applicants in determining whether licensure standards in the state(s) of licensure are substantially equivalent to or stricter than Montana's.

24.147.502 INACTIVE STATUS AND REACTIVATION ACTIVATION

(1) and (2) remain the same.

(3) Upon application and payment of the appropriate fee, the board may ~~reactivate~~ activate an inactive license if the applicant does each of the following:

(a) signifies to the board, in writing, that upon issuance of the active license, the applicant intends to be an active practitioner in the state of Montana; ;

(b) presents satisfactory evidence that the applicant has attended six hours of continuing education which comply with the continuing education rules of the board for each year or portion of a year that licensee has been inactive, not to exceed 12 hours; ;

(c) submits certification from the licensing body of all jurisdictions where the applicant is licensed or has practiced that the applicant is in good standing and has not had any disciplinary actions taken against the applicant's license, or if the applicant is not in good standing by that jurisdiction, an explanation of the nature of the violation(s) resulting in that status, including the extent of the disciplinary treatment imposed; and

(d) and (4) remain the same.

AUTH: 37-1-131, 37-1-319, 37-19-202, MCA

IMP: 37-1-319, MCA

24.147.505 RENEWAL OF LICENSE (1) All licenses, whether individual or establishment, with the exception of cemeteries, ~~expire~~ must be renewed annually and ~~may be renewed~~ pursuant to 37-1-141, MCA the provisions of this rule. ~~If a license is not renewed, practice by a licensee, whether individual or an establishment, after the renewal date set forth in ARM 8.2.208 will constitute unlicensed practice and will subject the licensee to disciplinary action as provided by statute and rule.~~

(2) Prior to the renewal date, the ~~board office~~ department will mail a renewal ~~form~~ notice to the licensee's preferred mailing address on file with the ~~board~~ department. Failure to receive such renewal ~~form~~ notice shall not relieve the licensee of the licensee's obligation to renew and pay renewal fees in a timely manner.

(3) ~~Renewal forms~~ Renewals that are in any manner incomplete on receipt by the ~~board office~~ department will be returned to the licensee for completion and resubmission. To be considered complete, the renewal ~~form~~ must:

~~(a) bear the original signature of the licensee or, if an establishment, the licensed manager of that establishment;~~

~~(b) (a)~~ be accompanied by the appropriate renewal fee. Checks returned to the ~~board~~ department for any reason will be returned to the licensee for payment. The license will be considered not renewed until proper payment is received;

~~(c) (b)~~ be accompanied by a completed and signed include an affidavit of continuing education if required for the license being renewed as specified in ARM 24.147.2101; and

~~(d) (c)~~ be accompanied by any other material or documentation the board may require for renewal as identified on the renewal ~~form~~ notice.

(4) Complete ~~renewal forms~~ renewals submitted to the ~~board~~ department after the dates specified in ARM 8.2.208 and [NEW RULE II] shall be considered late and subject to a late penalty fee in addition to the renewal fee. In the event of a late renewal, the licensee may be subject to disciplinary action by the ~~board~~ department for unlicensed practice.

~~(5) Licensees who fail to renew, or notify the board of their intent not to renew, before the established renewal date will be notified in writing by the board office of the lapsing of their license.~~

AUTH: 37-19-202, 37-19-301, ~~37-19-306~~, MCA

IMP: 37-1-141, 37-19-301, ~~37-19-306~~, MCA

24.147.901 SANITARY STANDARDS - PREPARATION ROOM (1) through (7) remain the same.

(8) Waste and refuse shall be disposed of in a sanitary manner.

~~(a) Infectious wastes and sharps must be stored for disposal and disposed of in accordance with Title 75, chapter 10, part 10, MCA.~~

~~(b) The use of standard embalming agents is a scientifically proven method of rendering infectious wastes noninfectious.~~

~~(c) Used sharps, even if sterilized, must be placed in leakproof, rigid, puncture-resistant containers and securely taped or capped when full to prevent the loss of the contents during waste disposal processes.~~

AUTH: 37-19-202, 75-10-1006, MCA

IMP: 37-19-403, 75-10-1001, 75-10-1002, 75-10-1003, 75-10-1004, 75-10-1005, MCA

REASON: It reasonable and necessary to amend this rule as the infectious waste standards are already addressed in the Department of Public Health and Human Services statutes at Title 75, chapter 10, part 10, MCA.

24.147.1101 CREMATORY FACILITY REGULATION (1) through (9) remain the same.

(10) Prior to beginning the cremation process, the crematory must have in its possession, written authorization(s) bearing the original, photocopied, or facsimile signatures of the authorizing agent and, if the death occurred in Montana, the coroner having jurisdiction ~~or the state medical examiner~~. In addition, the following information must be included in the authorization and kept on record:

(a) identification of the decedent;

(b) identification and relationship of the authorizing agent;

(c) hazardous implants or other medical devices;

(d) personal property and disposition thereof;

(e) disposition of cremated remains;

(f) a description of the cremation process;

(g) a release from liability per 37-19-707, MCA; and

(h) any other information pertinent to the individual cremation.

(11) remains the same.

AUTH: 37-1-131, 37-19-202, 37-19-703, MCA

IMP: 37-19-702, 37-19-703, 37-19-705, MCA

REASON: It is reasonable and necessary to amend this rule because the State Medical Examiner does not have the authority to authorize cremation. The Board determined it is reasonably necessary to specify the criteria that need to be included in a cremation authorization to provide greater protection to the consumer and the public in general.

24.147.1114 LICENSURE AS A CREMATORY OPERATOR (1) Applicants for original licensure as a crematory operator shall submit an application, ~~on a form prescribed~~ provided by the ~~board~~ department, and the application fee.

(2) remains the same.

AUTH: 37-1-131, 37-19-202, MCA  
IMP: 37-19-702, 37-19-703, MCA

24.147.1115 LICENSURE AS A CREMATORY TECHNICIAN (1) Applicants for original licensure as a crematory technician shall submit an application, ~~on a form prescribed~~ provided by the ~~board~~ department, and the application fee.

(2) remains the same.

AUTH: 37-1-131, 37-19-202, MCA  
IMP: 37-19-702, 37-19-703, MCA

24.147.1301 APPLICATIONS FOR CEMETERY CERTIFICATES OF AUTHORITY LICENSES (1) Applications for a ~~certificate of authority license~~ to operate a cemetery shall be filed on a form furnished by the ~~board~~ department at the principal office of the board. In addition to the payment of the fees, each application shall be accompanied by the following:

(a) remains the same.

(i) articles of incorporation, if applicable;

(ii) and (iii) remain the same.

(iv) perpetual care and maintenance trust agreement executed by the ~~board of directors of the cemetery authority owner, the presiding officer, or other agent~~;

(b) a statement signed by a majority and verified by ~~one of the directors of the applicant owner, the presiding officer, or other agent~~, which shall set forth:

(i) names and addresses of the owners, partners, incorporators, directors, officers, and trustees of the perpetual care and maintenance fund, including the person who will be in charge of sales;

(ii) through (e) remain the same.

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA  
IMP: 37-19-807, 37-19-814, MCA

REASON: It is reasonable and necessary to specify the individuals responsible for providing certain application information for cemetery licensure and address situations where the applicant does not have a board of directors. Further, it is reasonably necessary to clarify that articles of incorporation are only required when the cemetery licensure applicant is a corporation.

24.147.1302 MANAGERS (1) Each cemetery for which a new ~~certificate of authority license~~ is required shall be operated under the supervision of a ~~managing officer~~ cemetery manager. The applicant for a new ~~certificate of authority~~ cemetery license will designate the ~~managing officer~~ cemetery manager. The cemetery



authority company will notify the board within 30 days of a change in the ~~managing officer~~ cemetery manager.

(2) remains the same.

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-19-814, 37-19-822, MCA

REASON: It is reasonable and necessary to replace "managing officer" with "cemetery manager" to achieve consistency in terminology use within the rules.

24.147.1304 PERPETUAL CARE AND MAINTENANCE FUND REPORTS

(1) remains the same.

(2) Each cemetery authority company shall file with the board annually, on or before June 1, or within five months after close of their fiscal year provided approval has been granted by the board, a written report in a format prescribed by the board setting forth:

(a) and (b) remain the same.

(c) a statement showing separately the total amount of the general and special perpetual care and maintenance funds invested in each of the investments authorized by law, and the amount of cash on hand not invested, which statement shall actually show financial condition of the funds; ~~and~~

(d) a statement showing separately the location, description, and character of the investments in which the perpetual care and maintenance funds are invested. The statement shall show the valuations of any securities held in the perpetual care and maintenance fund; and

(e) the report shall be verified by the ~~president or vice president and one other officer~~ owner, presiding officer, or their agent of the cemetery ~~corporation~~ company, and shall be certified by the accountant or auditor preparing the report.

(3) Any cemetery authority company that does not file its report within the time prescribed may be subject to disciplinary action as prescribed by the Montana Administrative Procedure Act, and 37-1-304, MCA, including a fine of up to \$1,000.

(a) A cemetery authority company may request waiver or reduction of a fine by making a written request. The request shall be postmarked within 30 days of notice of the fine, and shall be accompanied by a statement showing good cause for the request.

(b) The board may waive or reduce the fine where a timely request is made and where it determines, in its discretion, that the cemetery authority company has made a sufficient showing of good cause for the waiver or reduction.

(c) The board shall examine the reports filed with it as to the cemetery authority's company's compliance with all relevant statutes, as to the amount of perpetual care and maintenance funds collected and as to the manner of investment of such funds.

(d) In the event that the board requires an audit, the board shall contract with a licensed or certified public accountant and the fee charged by the accountant for the actual cost of the audit must be paid by the cemetery authority company.

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-19-807, 37-19-822, 37-19-823, MCA

REASON: It is reasonable and necessary to replace "corporation" with "company" to clarify that even though not all private-for-profit cemeteries in Montana are incorporated, the owner or agent must still comply with the requirements in this rule.

24.147.1305 AUDIT FEES (1) In the event that the board requires an audit, the board shall contract with a licensed or certified public accountant and the fee charged by the accountant for the actual cost of the audit must be paid by the cemetery authority company.

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-19-807, 37-19-808, 37-19-822, 37-19-823, MCA

24.147.1312 RESTRICTIONS ON OFFICERS USE OF CEMETERY FUNDS

~~(1) No director or officer of any cemetery authority, or as the partner or agent of others, person or entity associated with the cemetery company shall directly or indirectly borrow from any funds of the cemetery corporation or association, including perpetual care funds, and maintenance funds, or any trust funds of the cemetery company. No director shall become an endorser or surety for loans to others, nor in any manner be an obligor for money borrowed of or loaned by the corporation or association. No corporation, of which a director or an officer is a stockholder, or in which either of them is in any manner interested, shall borrow any of the funds of the corporation or association.~~

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-19-807, 37-19-822, MCA

REASON: It is reasonable and necessary to amend this rule to clarify that no individual or entity associated with a cemetery company may borrow from or against funds of the cemetery company. The Board concluded that the amendment is necessary to implement the statutory mandate at 37-19-822, MCA, that trust fund money must be used exclusively for cemetery care and maintenance and not for any other purpose.

24.147.1313 TRANSFER OF CEMETERY OWNERSHIP (1) Whenever ownership of any cemetery authority company is proposed to be transferred, the cemetery authority company shall notify the board ~~of funeral service in the department of labor and industry~~. A change in ownership, for purposes of this rule, shall be deemed to occur whenever more than 50% of the equitable ownership of a cemetery authority company is transferred in a single transaction, or in a related series of transactions to one or more persons, associations, or corporations. The notice shall specify the address of the principal offices of the cemetery authority company, and whether it will be changed or unchanged, and shall specify the name and address of each new owner and/or the stockholders thereof.

(2) Notice of such a change of ownership shall be published in a newspaper of general circulation in the county in which the cemetery is located. The notice shall

specify the address of the principal offices of the cemetery authority company, whether changed or unchanged, and shall specify the name and address of each new owner and/or each stockholder owning more than 5% of the stock of each new owner.

(3) When there is a change of ownership pursuant to this rule, the existing ~~certificate of authority license~~ shall lapse and a new ~~certificate of authority license~~ shall be obtained from the board of funeral service. ~~No person shall purchase a cemetery, including purchase at a sale for delinquent taxes, or purchase more than 50% of the equitable ownership of a cemetery authority without having obtained a certificate of authority from the board of funeral service prior to the purchase of the cemetery, or such an ownership interest in the cemetery authority.~~

(4) Every cemetery authority company shall post and continuously maintain at the main public entrance to the cemetery, a sign specifying the current name and mailing address of the cemetery authority company, a statement that the name and mailing address of each owner, presiding officer, and/or their agent ~~director and officer~~ of the cemetery authority company may be obtained by contacting the board of funeral service of the department of labor and industry, and the mailing address of the board of funeral service. Such signs shall be at least 16 inches high and 24 inches wide and shall be prominently mounted upright and vertical.

(5) The board of funeral service shall suspend the ~~certificate of authority license~~ of any cemetery authority company which is in violation of the sign or public notice requirements of this rule. Such ~~certificate license~~ may be reinstated only upon compliance with such requirements.

AUTH: 37-1-131, 37-19-202, 37-19-807, 37-19-816, MCA  
IMP: ~~37-19-815~~, 37-19-816, MCA

24.147.1314 PERPETUAL CARE AND MAINTENANCE FUNDS (1) Every cemetery authority company which now or hereafter maintains a cemetery, shall place its cemetery under perpetual care and maintenance and establish, maintain, and operate a perpetual care and maintenance fund. Perpetual care and maintenance funds may be commingled for investment, and the income therefrom shall be divided between the perpetual care and maintenance fund in the proportion that each fund contributed to the principal sum invested. The funds shall be held in the name of the cemetery authority company or in the name of the trustees appointed by the cemetery authority company.

(2) The principal of all funds for perpetual care and maintenance funds shall be invested, and the income only ~~maybe~~ may be used for the care, maintenance, additions, improvements, or fixtures to the cemetery property, in accordance with the provisions of law and the resolutions, bylaws, rules, and regulations, or other actions or instruments of the cemetery authority company and for no other purpose. Perpetual care and maintenance funds shall be maintained separate and distinct from all other funds, and the trustees shall keep separate records thereof.

(3) The cemetery authority company may from time to time adopt plans for the general care and maintenance of its cemetery, and charge and collect from all subsequent purchasers of plots such reasonable sum as, in the ~~judgement~~ judgment

of the cemetery ~~authority~~ company, will aggregate a fund, the reasonable income from which will provide care and maintenance.

(4) and (5) remain the same.

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-19-807, 37-19-822, MCA

24.147.1501 BRANCH FACILITY (1) A branch facility need only consist of space for the purpose of visitation and funeral rites. Funeral arrangements and sale of funeral goods and services shall be permitted in this facility. Performance of embalming shall not be permitted. An annual renewal fee is required but no annual inspection will be mandated.

AUTH: 37-1-131, ~~37-19-101~~, 37-19-202, MCA

IMP: 37-19-827, 37-19-828, 37-19-829, MCA

REASON: It is reasonably necessary to address confusion among licensees and specify that no annual inspection is required for branch facilities.

24.147.1503 REQUIREMENTS FOR SALE OF AT-NEED, PRE-NEED, AND PREPAID FUNERAL ARRANGEMENTS (1) through (4) remain the same.

(5) Any funeral trust agreement shall include ~~that a provision that a pre-need purchaser shall receive a receipt for the deposited funds from shall be returned to the purchaser of the depository institution.~~ The funeral trust agreement must include a disclosure to the pre-need purchaser that the purchaser should receive the receipt within 30 days, and if the receipt is not received within the 30-day timeframe, the purchaser should contact the pre-need seller.

AUTH: 37-1-131, ~~37-19-101~~, 37-19-202, MCA

IMP: 37-19-827, 37-19-828, 37-19-829, MCA

REASON: The Board determined that it is reasonably necessary to further protect the public by requiring disclosure in the funeral trust agreement that the pre-need purchaser should receive a receipt from the depository institution. By requiring the disclosure, the purchaser will be provided notice that they are to receive timely confirmation that their funds have been properly deposited.

24.147.2108 EXCEPTIONS - NOT ENGAGING IN THE PRACTICE OF FUNERAL SERVICE (1) The board has authority to make a written exception from the continuing education requirements for those persons who certify that they do not intend to engage in the practice of funeral service. Applicants for certificate or license renewal must certify their intention to the board on a ~~form prescribed~~ notice furnished by the board department. The board defines "practice of funeral service" to mean:

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

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

(c) in making arrangements at or prior to need, financial or otherwise, for the providing of such services and/or the same of funeral merchandise, whether for present or future use; or;

(d) in general, engaging in the practice or performing any functions of funeral directing and/or embalming as presently known including those stipulated herein.

AUTH: 37-1-131, 37-1-319, 37-19-202, ~~37-19-316~~, MCA

IMP: ~~37-19-316~~ 37-1-306, MCA

24.147.2401 COMPLAINT FILING (1) remains the same.

(2) Complaints must be in writing, and shall be filed on the proper complaint form prescribed by the ~~board~~ department.

(3) Upon receipt of the written complaint form, the ~~board-office~~ department shall log in the complaint and assign it a complaint number. The complaint shall then be sent to the licensee complained about for a written response. Upon receipt of the licensee's written response, both complaint and response shall be considered by the screening panel of the board for appropriate action including dismissal, investigation, or a finding of reasonable cause of violation of a statute or rule. The ~~board-office~~ department shall notify both complainant and licensee of the determination made by the screening panel.

(4) and (5) remain the same.

AUTH: 37-1-131, 37-19-202, MCA

IMP: 37-1-307, 37-1-308, 37-1-309, MCA

5. The Board proposes to adopt the following new rules:

NEW RULE I FEE ABATEMENT (1) The Board of Funeral Service adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-131, MCA

IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The Board has determined there is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the Board to authorize the Department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the Board. The Department recently adopted ARM 24.101.301 to implement a means for prompt elimination of excess cash accumulations in the licensing programs operated by the Department.

Adoption and incorporation of ARM 24.101.301 will allow the Department to promptly eliminate excess cash balances of the Board that result from unexpectedly high licensing level or other nontypical events. Abatement in such instances will allow the licensees who have paid fees into the Board's program to receive the temporary

relief provided by abatement. Adoption of this abatement rule does not relieve the Board from its duty to use proper rulemaking procedures to adjust the Board's fee structure in the event of recurrent instances of cash balances in excess of the statutorily allowed amount.

NEW RULE II RENEWAL OF CEMETERY LICENSE (1) All cemetery licenses must be renewed every five years beginning on July 1, 2000.

(2) Prior to the renewal deadline date, the department will mail a renewal notice to the cemetery's preferred mailing address on file with the department. Failure to receive such renewal notice shall not relieve the licensee of the licensee's obligation to renew and pay renewal fees in a timely manner.

(3) Renewals that are in any manner incomplete on receipt by the department will be returned to the licensee for completion and resubmission. To be considered complete, the renewal must:

(a) be accompanied by the appropriate renewal fee. Checks returned to the department for any reason will be returned to the licensee for payment. The license will be considered not renewed until proper payment is received; and

(b) be accompanied by any other material or documentation the board may require for renewal as identified on the renewal notice.

(4) Complete renewals submitted to the department after the renewal deadline date shall be considered late and subject to a late penalty fee in addition to the renewal fee. In the event of a late renewal, the licensee may be subject to disciplinary action by the department for unlicensed practice.

AUTH: 37-19-814, MCA

IMP: 37-19-814, MCA

REASON: It is reasonable and necessary for the Board to adopt NEW RULE II to set the renewal process and renewal date for cemeteries, as per 37-19-814, MCA. The statute provides that the renewal date for cemeteries must be set in Board rule, therefore it cannot be included in the Department rule, ARM 8.2.208.

6. The Board proposes to repeal the following rule:

24.147.1311 CEMETERY AUTHORITY RULES found at ARM page 24-13687.

AUTH: 37-19-807, MCA

IMP: 37-19-807, MCA

REASON: The Board determined that it is reasonable and necessary to repeal this rule as the Board does not intend to designate how cemetery companies may run their businesses. The Board is not in the business of managing cemetery companies and specifying that the companies may enact rules does nothing to further the public's protection.

7. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdfnr@mt.gov](mailto:dlibsdfnr@mt.gov), and must be received no later than 5:00 p.m., April 6, 2006.

8. An electronic copy of this Notice of Public Hearing (Notice) is available through the Department's and Board's site on the World Wide Web at [www.funeral.mt.gov](http://www.funeral.mt.gov). The Department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

9. The Board of Funeral Service maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Funeral Service administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to [dlibsdfnr@mt.gov](mailto:dlibsdfnr@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

10. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

11. Jack Atkins, attorney, has been designated to preside over and conduct this hearing.

BOARD OF FUNERAL SERVICE  
R.J. (DICK) BROWN, CHAIRPERSON

/s/ DARCEE L. MOE  
Darcee L. Moe  
Alternate Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 27, 2006.