

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.147.402 mortician license,) PROPOSED AMENDMENT
24.147.403 mortuary transfers,)
inspections and temporary permits,)
24.147.501 out-of-state mortician)
licensure, and 24.147.1503 sale of at-)
need, preneed, and prepaid funeral)
arrangements)

TO: All Concerned Persons

1. On November 5, 2015, at 9:30 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment 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 October 30, 2015, 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; dlidsdfnr@mt.gov (board's e-mail).

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

24.147.402 ORIGINAL MORTICIAN LICENSE - APPLICATION (1) remains the same.

~~(a)~~ (b) a certified transcript of ~~60~~ 30 semester credits ~~credit hours~~ ~~or, if courses are offered on a quarter calendar, 90~~ or 45 quarter credits ~~credit hours~~ sent directly to the board office from a college or university accredited by a regional accrediting agency recognized by the U.S. Department of Education; in any of the following subjects:

- (i) accounting;
- (ii) business;
- (iii) computer applications;
- (iv) communications/speech;
- (v) English;
- (vi) history;
- (vii) mathematics;
- (viii) psychology;

(ix) religion;

(x) sociology;

(xi) education;

(xii) biological sciences; or

(xiii) other subjects germane to the practice of mortuary science.

~~(b) (a) a diploma and certified transcript of 60 semester credits or 90 quarter credits, sent directly to the board office from a funeral service or mortuary science education program college of mortuary science accredited by the American Board of Funeral Service Education (ABFSE) or its successor, demonstrating granting an associate degree, certificate, or diploma and credit hours obtained in addition to those obtained under (1)(a);~~

(c) remains the same.

(d) a certified copy of the certification form verifying successful completion, within five years prior to the date of application, of the International Conference of Funeral Service Examining Board ("Conference") examination sent directly to the board office from the Conference.

(2) remains the same.

(3) A diploma and certified transcript demonstrating a baccalaureate degree in a funeral service or mortuary science education program from an ABFSE or successor accredited college of mortuary science will serve to meet the requirements of (1)(a) and (b).

(4) through (6) remain the same.

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

IMP: 37-1-101, 37-19-302, 37-19-303, MCA

REASON: The 2015 Montana Legislature enacted Chapter 34, Laws of 2015 (House Bill 110), an act clarifying educational requirements for the Board of Funeral Service. The bill was signed by the Governor on February 18, 2015, and became effective on October 1, 2015. The bill clarified the intent to require, beyond the 60 semester hours of accredited mortuary science education, additional higher education for morticians and directed the board to prescribe the approved subject areas. The board is amending this rule to implement the legislation and clarify that qualifying American Board of Funeral Service Education (ABFSE) programs are referred to as both "mortuary science" or "funeral service" education programs. Section (1)(a) also clarifies that the ABFSE recognizes a certificate or diploma as equivalent to an ABFSE accredited associate degree, because all ABFSE accredited education programs require 60 semester credits within a prescribed curriculum, regardless of whether an associate's degree, a certificate, or a diploma is issued.

While most new mortuary science graduates take the national examination and seek licensure to begin practicing the profession, the board has received applications from individuals not currently licensed in another state who do not qualify for licensure under ARM 24.147.501. Because skills learned in school and in preparation for the licensure exam diminish after time without use, and changes occur in public health issues, it is necessary for the board to amend (1)(d) and establish a time limit on how long a person may be out of practice before needing to re-establish current competency. In achieving a balance between public safety and

unnecessarily impacting a person's ability to work, the board determined that a five-year period meets this balance and is consistent with other states and professions having the same requirement.

24.147.403 MORTUARY TRANSFERS, INSPECTIONS, AND TEMPORARY PERMITS (1) through (1)(e) remain the same.

(f) The board shall review ~~all new mortuary applications~~, all inspection reports indicating noncompliance, and any responses to the inspection at the next regularly scheduled board meeting after the inspection. For good cause, the board may request a reinspection; the costs of which shall be paid by the applicant prior to issuance of a permanent license.

(2) through (4) remain the same.

AUTH: 37-1-131, 37-19-202, 37-19-403, MCA

IMP: 37-19-402, 37-19-403, 37-19-703, 75-10-1001, 75-10-1002, 75-10-1003, 75-10-1004, 75-10-1005, 75-10-1006, MCA

REASON: It is reasonably necessary for the board to amend (1)(f) to no longer require board review of all new mortuary applications to align with board direction that staff will process all routine business applications.

24.147.501 LICENSURE OF OUT-OF-STATE MORTICIAN APPLICANTS

(1) and (1)(a) remain the same.

(b) the applicant has a license based on standards in another state whose standards at the time of application to this state are substantially equivalent to Montana standards; and

(c) and (2) remain the same.

(3) The applicant shall affirm whether the applicant has been actively engaged in the practice during the period of licensure in another state. ~~If not so actively engaged in practice as a mortician in five of the last seven years from the date of the application, the board may require the applicant, as part of a notice of proposed board action, to take continuing education or undergo supervised practice for a period of time to ensure competency. the applicant must provide proof of successful completion of the national examination on a date within five years prior to the date of application, sent directly from the Conference to the board office.~~

(4) remains the same.

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

IMP: 37-1-137, 37-1-304, 37-1-316, 37-19-302, ~~37-19-703~~, MCA

REASON: The board determined it is reasonably necessary to amend (1)(b) to address language ambiguity and applicant confusion regarding when another state's standards are to be measured. The amendment will clarify that the substantial equivalency determination is made at the time of application to this state per 37-1-304, MCA.

While this rule currently requires affirmation of active practice, licensing staff has requested the board provide a specific time frame for active practice in another

state in response to applicant questions. For the same reasons stated for changes to ARM 24.147.402(1)(d), the board is amending (3) to require that applicants be actively engaged in mortician practice for five of the last seven years prior to applying to Montana. The board determined this requirement will demonstrate to the public reasonably current skills in mortuary arts and mortuary sciences and if not, the applicant must pass the national examination instead of the board bearing the cost involved in instituting formal action and monitoring a final order. The board concluded that examination is a superior method of measuring competency, as compared to continuing education or supervised practice.

It is reasonable and necessary to amend the catchphrase to clarify that this rule addresses the licensure of out-of-state morticians only and does not refer to other professions licensed by the board. Licensing staff utilizes this rule solely for mortician licensure. The board is also amending the implementation citations to remove the citation to 37-19-703, MCA, the statute for crematory, crematory operator, and crematory technician application requirements, as this rule applies only to morticians.

24.147.1503 REQUIREMENTS FOR SALE OF AT-NEED, PRENEED, AND PREPAID FUNERAL ARRANGEMENTS (1) and (2) remain the same.

(3) Trust funds shall be deposited in accordance with 37-19-828, MCA. ~~within three business days after receipt in a special account maintained exclusively for the deposit of monies in a banking institution, savings or building and loan association or credit union that must have its principal place of business in this state and must be organized under federal and/or Montana law.~~

(4) and (5) remain the same.

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

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

REASON: The 2015 Montana Legislature enacted Chapter 125, Laws of 2015 (House Bill 225), an act revising funeral trust banking provisions and extending the time period within which money must be deposited. The bill was signed by the Governor on March 27, 2015, and became effective on October 1, 2015. The bill amended 37-19-828, MCA, and increased the time for licensees to deposit trust money from three to ten days. The legislation also allows the financial institution holding the trust money to be organized under the laws of Montana or another state as long as it maintains an office in this state. The board is amending this rule to refer to the statute itself rather than repeat its provisions.

4. 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 e-mail to dlibsdfnr@mt.gov, and must be received no later than 5:00 p.m., November 13, 2015.

5. An electronic copy of this notice of public hearing is available at www.funeral.mt.gov (department and board's web site). 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 web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The board 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent 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; or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors, Representative Kenneth Holmlund (HB 110) and Representative Vince Ricci (HB 225), were contacted on September 23, 2015, by telephone.

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.147.402, 24.147.403, 24.147.501, and 24.147.1503 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the 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; dlibsdfnr@mt.gov (board's e-mail).

9. Colleen White, attorney, has been designated to preside over and conduct this hearing.

BOARD OF FUNERAL SERVICE
JOHN TARR, CHAIRPERSON

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 5, 2015