



Board of Funeral Service

Mailing Address:
810 North Main Street, Suite 298
Spearfish, SD 57783

Phone: (605) 642-1600 E-Mail: proflic@rushmore.com
Home Page: funeralboard.sd.gov

DRAFT TELECONFERENCE BOARD MEETING AGENDA

TO: Board Members

FROM: Carol Tellinghuisen, Executive Secretary

DATE: April 14, 2022

MEETING DATE: May 4, 2022

MEETING TIME: 1:00 PM CDT / 12:00 PM MDT

Testing begins at 1:00 PM CDT / 12:00 PM MDT

MEETING LOCATION: Best Western PLUS Ramkota Hotel
3200 West Maple Street
Sioux Falls, SD 57107
(605) 336-0650

Persons interested in joining the meeting may do so by calling the teleconference number at (866) 410-8397. Key in the Passcode: 5805740042.

Agenda Item Number:

1. Call to Order/Welcome and Introductions-Brennick
2. Roll Call-Brennick
3. Corrections or additions to the agenda
4. Approval of the agenda
5. Public Testimony/Public Comment Period at 1:05 p.m. CDT-5 minutes for the public to address the Board
6. Approval of the minutes from December 9, 2021
7. FY Financial Update
8. ICFSEB Annual Conference Update - Brennick
9. Report on Survey Results
10. Election of Officers
11. Discussion on SDCL 36-19-28 – Stock of Caskets
12. Update on Annual Inspections
13. SD Funeral's Directors Association Contract
14. Legislative Update (Legal Counsel)
15. Upcoming Statute Revisions
16. Next Meeting Reminder – July 7, 2022 at 3 p.m. MDT / 4 p.m. CDT

17. Executive Session-Pursuant to SDCL 1-25-2
 - a. Complaints/Investigations
 - i. #167
 - b. Executive Secretary Contract Renewal / RFP
18. Any other business coming in between date of mailing and date of meeting
19. Adjourn



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OFFICIAL BOARD MINUTES FOR DECEMBER 9, 2021 BOARD MEETING TELECONFERENCE

Members Present: Randy Brennick, President
James Jones, Vice-President
Chad Osthus, Secretary/Treasurer
Bart Fredericksen, Member
Michael Carlsen, Member
Mariah Pokorny, Dept. of Health (Non-voting member)

Members Absent: Tony Farnen, Lay Member
Sharel Delzer, Lay Member

Others Present: Carol Tellinghuisen, Executive Secret
Abby Rehorst, Executive Assistant
Megan Borchert, Attorney General's Office
Ali Tornow, DOH Legal Counsel

Call to Order/Welcome and Introductions: President Brennick called the meeting to order at 3:00 PM MDT.

Roll Call: Brennick asked Tellinghuisen Geddes to call the roll. Brennick, yes; Jones, yes; Osthus, yes; Fredericksen, yes; Carlsen, yes; Delzer, yes; Pokorny, yes. A quorum was present.

Corrections or additions to the agenda: None

Approval of the agenda: Carlsen moved to approve the Agenda. Jones seconded the motion. **MOTION PASSED.**

Public Comment: Brennick called for any comments from the public. No comments were made.

Approval of the minutes from September 9, 2021: Carlsen made a motion to approve the minutes from September 9, 2021. Jones seconded the motion. **MOTION PASSED** by unanimous voice vote.

FY Financial Update: Tellinghuisen Geddes reported figures as of October 31, 2021: monthly revenue of \$20,525.00; monthly expenditures of \$7,070.42 and cash balance of \$127,158.63.

Update on Executive Orders-Annual Inspections: Carlsen, Jones and Frederickson are acting as inspectors on behalf of the Board. Jones stated that he is almost done with his part of the inspections. Carlsen and Frederickson stated that they both have two inspections left. Inspections will be completed by the end of the year.

Association Outreach: Pokorny stated that she had attended some of the Association's district meetings. Carlsen stated that he attended one of the meetings with Pokorny. It was agreed that the Board will engage more with the Association to consistently have their involvement and move toward common goals. Tellinghuisen suggested that the Association assign a Board liaison that will attend the Board's meetings and report to the Association. The Board agreed this would be helpful in making sure the Association has continued involvement in the happenings of the Board. Pokorny stated that further engagement with the Association is needed when moving forward with future law changes. It was agreed that the Board will work closely with the Association and members of the profession to ensure understanding of the legislative process as well as a united front for statute revisions.

Legislative Updates: Tornow stated she did not have any legislative updates at this time.

Carlson made the motion to enter executive session. Jones seconded the motion. **MOTION PASSED** by unanimous voice vote.

The Board entered Executive Session at 3:25 to discuss complaint #167. The Board exited Executive Session at 3:42 p.m.

Carlson made the motion to accept the Agreed Disposition in complaint #167. Osthus seconded the motion. **MOTION PASSED** by roll call vote: Brennick, yes; Jones; abstain; Osthus, yes; Carlsen, yes; Frederickson, yes.

ICFSEB Annual Conference-February 23 & 24, 2022-Houston, TX: Brennick is registered and scheduled to attend the annual conference.

Any other business coming in between date of mailing and date of meeting: There was no other business.

Schedule meetings for 2022. The meetings for 2022 are scheduled as follows: April 4, 2022 at 3 p.m. MDT; July 7, 2022 at 3 p.m. MDT; October 3, 2022 at 3 p.m. MDT.

Jones made a motion to adjourn at 3:53 p.m. MDT. Frederickson seconded the motion. **MOTION PASSED** by unanimous voice vote.

Respectfully submitted,



Carol Tellinghuisen
Executive Secretary

1-27-1.17. Draft minutes of public meeting to be available--Exceptions--Violation as misdemeanor. The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. However, this section does not apply if an audio or video recording of the meeting is available to the public on the governing body's website within five business days after the meeting. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to draft minutes of contested case proceedings held in accordance with the provisions of chapter 1-26.

STATE OF SOUTH DAKOTA
 REVENUE SUMMARY BY BUDGET UNIT
 FOR PERIOD ENDING: 03/31/2022

AGENCY	09	HEALTH							
BUDGET UNIT	09204	BOARD OF FUNERAL SERVICE - INFO							
CENTER	COMP	ACCOUNT	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE				
COMPANY NO 6503									
COMPANY NAME PROFESSIONAL & LICENSING BOARDS									
092040061812	6503	4293955	FUNERAL LICENSE FEE	465.00	67,555.00				
ACCT:	4293		BUSINESS & OCCUP LICENSING (NON-GOVERNMENTAL)	465.00	67,555.00	*			
ACCT:	42		LICENSES, PERMITS & FEES	465.00	67,555.00	**			
092040061812	6503	4920045	NONOPERATING REVENUES	.00	1,935.70				
ACCT:	4920		NONOPERATING REVENUE	.00	1,935.70	*			
092040061812	6503	495000000000000000	REFUND OF PRIOR YEARS EXP	.00	96.89				
ACCT:	4950		REFUND OF PRIOR YEARS EXPENDITURES	.00	96.89	*			
ACCT:	49		OTHER REVENUE	.00	2,032.59	**			
CNTR:	092040061812			465.00	69,587.59	***			
CNTR:	092040061			465.00	69,587.59	***			
CNTR:	0920400			465.00	69,587.59	*****			
COMP:	6503			465.00	69,587.59	*****			
B UNIT:	09204			465.00	69,587.59	*****			

STATE OF SOUTH DAKOTA
 MONTHLY OBJECT/SUB-OBJECT REPORT BY BUDGET UNIT
 FOR PERIOD ENDING: 03/31/2022

AGENCY BUDGET CENTER	UNIT	COMP	HEALTH BOARD OF FUNERAL SERVICE - INFO	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE
092040061812	09204	6503	BOARD & COMM MBRS FEES		.00	780.00
ACCT: 5101			EMPLOYEE SALARIES		.00	780.00
092040061812	09204	6503	CAST-EMPLOYER'S SHARE		2.61	72.68
ACCT: 5102			EMPLOYEE BENEFITS		2.61	72.68
ACCT: 51			PERSONAL SERVICES		2.61	852.68
092040061812	09204	6503	AVTO-PRIV (IN-ST.) H/RTE		280.56	1,325.32
ACCT: 5203			TRAVEL		34.00	1,717.51
092040061812	09204	6503	NON-EMPLOY TRAVEL-IN ST.		280.56	1,717.51
ACCT: 5203			COMPUTER CONSULTANT		314.56	3,212.83
092040061812	09204	6503	LEGAL CONSULTANT		280.00	840.00
ACCT: 5204			MANAGEMENT CONSULTANT		1,197.90	1,821.60
092040061812	09204	6503	WORKSHOP REGISTRATION FEE		4,952.76	47,420.86
ACCT: 5205			COMPUTER SERVICES-STAFFE		200.00	200.00
092040061812	09204	6503	CENTRAL SERVICES		520.00	1,766.25
ACCT: 5206			RECORDS MGMT SERVICES		263.53	740.84
092040061812	09204	6503	HUMAN RESOURCES SERVICES		.00	178.77
ACCT: 5207			TELECOMMUNICATIONS SRVCS		.00	446.63
092040061812	09204	6503	CONTRACTUAL SERVICES		.00	21.98
ACCT: 5208			OFFICE SUPPLIES		7,414.19	53,436.93
092040061812	09204	6503	OFFICE SUPPLIES		88.40	88.40
ACCT: 5209			PRINTING-STAFFE		.00	28.28
092040061812	09204	6503	PRINTING-COMMERCIAL		.00	323.69
ACCT: 5210			SUPPLIES & MATERIALS		.00	203.14
ACCT: 52			OPERATING EXPENSES		88.40	650.42
COMP: 6503			PROFESSIONAL & LICENSING BOARDS		7,819.76	57,300.18
CENTER: 092040061812					7,819.76	58,152.86
B UNIT: 09204					7,819.76	58,152.86

BA1409R1

STATE OF SOUTH DAKOTA
CASH CENTER BALANCES
AS OF: 03/31/2022

AGENCY: 09 HEALTH
BUDGET UNIT: 09204 BOARD OF FUNERAL SERVICE - INFO

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	092000061812	1140000	136,841.76	DR	BOARD OF FUNERAL SERVICES
COMPANY/SOURCE TOTAL 6503 618			136,841.76	DR *	
COMP/BUDG UNIT TOTAL 6503 09204			136,841.76	DR **	
BUDGET UNIT TOTAL 09204			136,841.76	DR ***	

36-19-28. Sanitation, ventilation, and equipment required for funeral establishment.

No establishment shall be classified as a funeral establishment unless it has a preparation room equipped with a sanitary floor of tile or linoleum, a table with sanitary top, suitable drainage and ventilation, and containing necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or transportation, and a display room containing a reasonably adequate stock of funeral caskets and shipping cases.

Source: SDC 1939, § 27.1401 as added by SL 1939, ch 102, § 1; SDC Supp 1960, § 27.1401 (3); SL 1963, ch 154, § 1.



2022 South Dakota Legislature

House Bill 1152

Introduced by: **Representative Hoffman**

1 **An Act to establish rights regarding the disposition of a person's remains.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That a NEW SECTION be added to title 55:**

4 A person, who is 18 years of age or older and of sound mind, by entering into a
 5 preneed contract as defined by § 55-11-1, may direct the location, manner and conditions
 6 of disposition of the person's remains, and the arrangements for funeral goods and
 7 services to be provided upon the person's death. The disposition directions and funeral
 8 prearrangements that are contained in a preneed contract are not subject to cancellation
 9 or substantial revision unless the cancellation or substantial revision has been ordered by
 10 a person who the decedent has appointed in the preneed contract as the person authorized
 11 to cancel or revise the terms of the preneed contract, or unless any resources set aside
 12 to fund the preneed contract are insufficient under the terms of the preneed contract to
 13 carry out the disposition directions and funeral prearrangements contained therein.

14 **Section 2. That a NEW SECTION be added to title 55:**

15 Except as provided in section 3 of this Act, the right to control the disposition of
 16 the remains of a deceased person, the location, manner and conditions of disposition, and
 17 arrangements for funeral goods and services to be provided vests in the following, in the
 18 order named, provided such person is 18 years or older and is of sound mind:

19 (1) A person designated by the decedent as the person with the right to control the
 20 disposition in an affidavit executed in accordance with section 4 of this Act;

21 (2) A person designated in the federal Record of Emergency Data Form DD 93, or its
 22 successor form, to have the right of disposition by a member of the military who
 23 dies while under active-duty orders, as described in 10 U.S.C. § 1481, in effect on
 24 January 1, 2022;

25 (3) The surviving spouse;

- 1 (4) The sole surviving child of the decedent, or if there is more than one child of the
2 decedent, the majority of the surviving children. However, less than one-half of
3 the surviving children are vested with the rights of this section if they have used
4 reasonable efforts to notify all other surviving children of their instructions and are
5 not aware of any opposition to those instructions on the part of more than one-half
6 of all surviving children;
- 7 (5) The surviving parent or parents of the decedent. If one of the surviving parents is
8 absent, the remaining parent is vested with the rights and duties of this section
9 after reasonable efforts have been unsuccessful in locating the absent surviving
10 parent;
- 11 (6) The surviving brother or sister of the decedent, or if there is more than one sibling
12 of the decedent, the majority of the surviving siblings. However, less than the
13 majority of surviving siblings are vested with the rights and duties of this section
14 if they have used reasonable efforts to notify all other surviving siblings of their
15 instructions and are not aware of any opposition to those instructions on the part
16 of more than one-half of all surviving siblings;
- 17 (7) The surviving grandparent of the decedent, or if there is more than one surviving
18 grandparent, the majority of the grandparents. However, less than the majority of
19 the surviving grandparents are vested with the rights and duties of this section if
20 they have used reasonable efforts to notify all other surviving grandparents of their
21 instructions and are not aware of any opposition to those instructions on the part
22 of more than one-half of all surviving grandparents;
- 23 (8) The guardian of the person of the decedent at the time of the decedent's death, if
24 one had been appointed;
- 25 (9) The personal representative of the estate of the decedent;
- 26 (10) The person in the classes of the next degree of kinship, in descending order, under
27 the laws of descent and distribution to inherit the estate of the decedent. If there
28 is more than one person of the same degree, any person of that degree may
29 exercise the right of disposition;
- 30 (11) If the disposition of the remains of the decedent is the responsibility of the state
31 or a political subdivision of the state, the public officer, administrator or employee
32 responsible for arranging the final disposition of decedent's remains; or
- 33 (12) In the absence of any person under subdivisions (1) to (11), inclusive, of this
34 section, any other person willing to assume the responsibilities to act and arrange
35 the final disposition of the decedent's remains, including the funeral director with

1 custody of the body, after attesting in writing that a good faith effort has been
 2 made to no avail to contact the individuals under subdivisions (1) to (11), inclusive,
 3 of this section.

4 **Section 3. That a NEW SECTION be added to title 55:**

5 A person entitled under law to the right of disposition forfeits that right, and the
 6 right is passed on to the next qualifying person as listed in section 2 of this Act, in the
 7 following circumstances:

- 8 (1) Any person charged with first- or second-degree murder or voluntary manslaughter
 9 in connection with the decedent's death, and whose charges are known to the
 10 funeral director; provided, however that if the charges against the person are
 11 dismissed, or if the person is acquitted of the charges, the right of disposition is
 12 returned to the person;
- 13 (2) Any person who does not exercise the person's right of disposition within two days
 14 of notification of the death of decedent or within three days of decedent's death,
 15 whichever is earlier;
- 16 (3) If the person and the decedent are spouses and a petition to dissolve the marriage
 17 is pending at the time of decedent's death; or
- 18 (4) Where the court, pursuant to section 5 of this Act, determines that the person
 19 entitled to the right of disposition and the decedent were estranged at the time of
 20 death. For purposes of this subdivision, the term, estranged, means a physical and
 21 emotional separation from the decedent at the time of death that has existed for
 22 a period of time that clearly demonstrates an absence of due affection, trust, and
 23 regard for the decedent.

24 **Section 4. That a NEW SECTION be added to title 55:**

25 A person who is 18 years or older and of sound mind wishing to authorize another
 26 person to control the disposition of his or her remains as referenced in section 2 of this
 27 Act, may execute an affidavit before a notary public in substantially the following form:

28 State of _____ }

29 County of _____ }

30 I, _____, do hereby designate _____ with the
 31 right to control the disposition of my remains upon my death. I have/ have
 32 not attached specific directions concerning the disposition of my remains which the

1 designee shall substantially comply with, provided such directions are lawful and
 2 there are sufficient resources in my estate to carry out the directions.

3 Subscribed and sworn to before me this _____ day of the month of _____ of the year

4 _____.

5 _____ (signature of notary public)

6 **Section 5. That a NEW SECTION be added to title 55:**

7 Notwithstanding sections 1 to 4, inclusive, of this Act, the court of the county where
 8 the decedent resided may award the right of disposition to the person determined by the
 9 court to be the most fit and appropriate to carry out the right of disposition, and may
 10 make decisions regarding the decedent's remains if those sharing the right of disposition
 11 cannot agree. The following provisions apply to the court's determination:

12 (1) If the persons holding the right of disposition are two or more persons with the
 13 same relationship to the decedent, and they cannot, by majority vote, make a
 14 decision regarding the disposition of the decedent's remains, any of the persons or
 15 a funeral home with custody of the remains may file a petition asking the probate
 16 court to make a determination in the matter;

17 (2) In making a determination under this section, the probate court shall consider the
 18 following:

19 (a) The reasonableness and practicality of the proposed funeral arrangements
 20 and disposition;

21 (b) The degree of the personal relationship between the decedent and each of
 22 the persons claiming the right of disposition;

23 (c) The desires of the person or persons who are ready, able, and willing to pay
 24 the cost of the funeral arrangements and disposition;

25 (d) The convenience and needs of other families and friends wishing to pay
 26 respects;

27 (e) The desires of the decedent; and

28 (f) The degree to which the funeral arrangements would allow maximum
 29 participation by all wishing to pay respect;

30 (3) In the event of a dispute regarding the right of disposition, a funeral home is not
 31 liable for refusing to accept the remains or to inter or otherwise dispose of the
 32 remains of the decedent or complete the arrangements for the final disposition of
 33 the remains until the funeral home receives a court order or other written
 34 agreement signed by the parties in the disagreement that decides the final

1 disposition of the remains. If the funeral home retains the remains for final
2 disposition while the parties are in disagreement, the funeral home may embalm
3 or refrigerate and shelter the body, or both, in order to preserve it while awaiting
4 the final decision of the court and may add the cost of embalming and refrigeration
5 and sheltering to the final disposition costs. If a funeral home brings an action
6 under this section, the funeral home may add the legal fees and court costs
7 associated with a petition under this section to the cost of final disposition. This
8 section may not be construed to require or to impose a duty upon a funeral home
9 to bring an action under this section. A funeral home and its employees may not
10 be held criminally or civilly liable for choosing not to bring an action under this
11 section; and

12 (4) Except to the degree it may be considered by the court under subsection (2)(c),
13 the fact that a person has paid or agreed to pay for all or part of the funeral
14 arrangements and final disposition does not give that person a greater right to the
15 right of disposition than the person would otherwise have. The personal
16 representative of the estate of the decedent does not, by virtue of being the
17 personal representative, have a greater claim to the right of disposition than the
18 person would otherwise have.

19 **Section 6. That a NEW SECTION be added to title 55:**

20 Any person signing a funeral service agreement, cremation authorization form, or
21 any other authorization for disposition is deemed to warrant the truthfulness of any facts
22 set forth therein, including the identity of the decedent whose remains are to be buried,
23 cremated, or otherwise disposed of, and the party's authority to order the disposition. A
24 funeral home shall have the right to rely on the funeral service contract or authorization
25 and shall have the authority to carry out the instructions of the person or persons whom
26 the funeral home reasonably believes holds the right of disposition. The funeral home shall
27 have no responsibility to contact or to independently investigate the existence of any next-
28 of-kin or relative of the decedent. If there is more than one person in a class who is equal
29 in priority and the funeral home has no knowledge of any objection by other members of
30 such class, the funeral home shall be entitled to rely on and act according to the
31 instructions of the first such person in the class to make funeral and disposition
32 arrangements; provided that no other person in such class objects in writing to the funeral
33 home.

1 **Section 7. That a NEW SECTION be added to title 55:**

2 No funeral home or funeral director who relies in good faith upon the instructions
3 of an individual claiming the right of disposition shall be subject to criminal or civil liability
4 or subject to disciplinary action for carrying out the disposition of the remains in
5 accordance with the instructions.

CHAPTER 36-19
FUNERAL DIRECTORS, EMBALMERS AND FUNERAL ESTABLISHMENTS

36-19-1. Definition of terms.

Terms used in this chapter mean:

- (1) "Board," the Board of Funeral Service;
- (1A)(2) "Branch chapel," a separate facility with a visitation room or chapel where no embalming is permitted that is owned by, a subsidiary of, or otherwise financially connected to or controlled by a licensed funeral establishment;
- (2)(3) "Embalmer ~~Funeral director/embalmer,~~" any person engaged in or conducting, or holding the person out as engaged in or conducting, the business of disinfecting, preserving, or both, or attempting to disinfect or preserve, or both, or cremate, dead human bodies, in whole or in part by use of chemicals externally, internally or by other methods, ~~as approved by the department of health;~~
- (3) "~~Funeral director,~~" any person, partnership, limited liability company, corporation, association, or organization engaged in or conducting or holding that person out as engaged in or conducting, at a funeral establishment, the business of preparing, other than embalming, for burial or disposal, and supervising the burial or disposal of dead human bodies, or who shall, in connection with the person's name or business, use the title, funeral director, undertaker, mortician, or any other title implying that the person is engaged in the business herein described;
- (4) "Funeral establishment," any place of business conducted at a specific street address or location devoted to the care and preparation for burial or transportation of dead human bodies;
- (5) "Funeral service," those ~~service~~ services provided or rendered by an ~~embalmer or funeral director, or both, as set forth in subdivisions (2) or (3) of this section~~ individual licensed pursuant to this chapter;
- (6) "Trainee in funeral service," any person who is engaged in the training of funeral service. However, no person may serve or attempt to serve as such trainee until that person has filed a registration with the board of funeral service as set forth in this chapter.

Commented [SS1]: What is the difference between an embalmer and a funeral director? Can we combine the two definitions?

Commented [PM2R1]: We will bring to full board but leaning on keeping two definitions as they are used throughout the chapter

36-19-2. State Board of Funeral Service – Terms and qualifications of members – Vacancies.

~~The State Board of Funeral Service shall include the five professional members who shall be licensed to practice funeral service. The Governor shall appoint the professional members of the board. However, no person may be appointed as a professional member of the board who has not been licensed in this state, as an embalmer and funeral director, or a five-member Board of Funeral Services. Four of the members of the board shall be licensed pursuant to the chapter to practice funeral service, for at least five years prior to appointment. One member of the board shall be a representative of the public who is not associated with or financially interested in the practice or business of funeral services or who is not a member of a related profession or occupation. No member of the board may concurrently serve in an elected, appointed, or employed position in any state professional association or governmental regulatory agency which presents a conflict of interest. The term of office of appointed members is three years. The Governor shall, by appointment, fill any vacancy. In the event of a vacancy on the board, the Governor shall appoint a new member to serve out the unexpired term. The Governor may remove a member of the board for dishonorable conduct, incompetence, or neglect of duties. The appointment to an unexpired term is not considered a full term.~~

Commented [SS3]: General update to make consistent with other licensing boards

The board shall also include two lay members who are users of the services regulated by the board. The term, lay member who is a user, refers to a person who is not licensed by the board but, where practical, uses the service licensed. The term shall be liberally construed to implement the purpose of this

~~section. The Governor shall appoint the lay members. The lay members shall have the same term of office as other members of the board.~~

~~No board member may serve more than three consecutive full terms. However, appointment to fill an unexpired term is not considered a complete term for this purpose. The Governor may stagger the terms to enable the board to have different terms expire each year.~~

~~The terms of members begin on October thirty-first of the calendar year in which the Governor appoints the member, unless otherwise designated by the Governor. The appointee's term expires on October thirtieth in the third year of appointment.~~

~~Any member's term ending June 30, 2013, or thereafter is extended to October thirtieth in the year the term is to expire.~~

~~The board shall also include the secretary of health or the secretary's designee as a nonvoting member.~~

36-19-3. Districts represented by board members.

~~For the purpose of this chapter this state is hereby divided into five districts, and one professional member of the State Board of Funeral Service shall be appointed as provided in § 36-19-2 from each of the said districts. The first district shall consist of the following counties: Moody, Lake, the portion of McCook east of state highway 81, Minnehaha, Silver Lake, Grandview, Valley and Molan townships in Hutchinson, Turner, Lincoln, Union, Clay, Yankton. The second district shall consist of the following counties: Sanborn, Miner, Hanson, Jerauld, Buffalo, Aurora, Brule, Davison, the portion of McCook west of state highway 81, the remainder of Hutchinson, Douglas, Charles Mix, Bon Homme. The third district shall consist of the following counties: Roberts, Day, Grant, Codington, Clark, Hamlin, Deuel, Brookings, Kingsbury. The fourth district shall consist of the following counties: Marshall, Brown, McPherson, Campbell, Walworth, Edmunds, Spink, Faulk, Potter, Sully, Hughes, Hyde, Hand, Beadle. The fifth district shall consist of the following counties: Bennett, Butte, Corson, Custer, Dewey, Fall River, Gregory, Haakon, Harding, Jackson, Jones, Lawrence, Lyman, Meade, Mellenc, Oglala Lakota, Pennington, Perkins, Stanley, Todd, Tripp, Ziebach.~~

Commented [SS4]: Appointment by district is inconsistent with how other licensing boards are appointed. When there are vacancies on the board, the DOH works closely with the board office to develop a list of recommendations taking into consideration geographic representation to forward to the Governor's office

36-19-4. Oath of office of appointive members.

~~The appointive members of the State Board of Funeral Service, before entering upon their duties shall respectively take and subscribe the oath required by other state officers, which shall be filed in the Office of the Secretary of State.~~

Commented [SS5]: This language in statute is unnecessary.

36-19-5. Removal of appointive members from board – Filling of vacancies.

~~The Governor may remove an appointive member of the State Board of Funeral Service for cause, and a member appointed to fill such vacancy caused by death, resignation, or removal shall serve during the unexpired term of his predecessor.~~

Commented [SS6]: Moved to § 36-19-2

36-19-6. Meetings of board – Quorum.

~~The State Board of Funeral Service board shall meet at least once a year and hold at least two meeting annually at a time and place to be set by the board. The board may also hold special other meetings as frequently as the proper and efficient discharge of its duties requires at a time and place set by the president or a majority of the board.~~

Commented [SS7]: Updated to allow board to conduct business if only 3 members are present. Added language to 36-19-40 to require a majority of board members "appointed" to take disciplinary action.

~~Four members A majority of the board constitute a quorum for the transaction of business. Except as provided in § 36-19-40, a majority vote of the members present constitutes a decision of the board.~~

36-19-6.1. Board continued within Department of Health – Records and reports.

~~The State Board of Funeral Service board shall continue within the Department of Health, and shall retain all its prescribed functions, including administrative functions. The board shall submit such records, information, and reports in the form and at such times as required by the secretary of health, except that the board shall report at least annually.~~

~~36-19-7. Compensation and expenses of board members, secretary and employees.~~

~~The State Board of Funeral Service may, pursuant to chapter 3-6D, determine the compensation of the secretary and other assistants as may be necessary to carry out the provisions of this chapter and any rules promulgated under this chapter. The board may incur other expenses as may be necessary. The compensation of the members and the other expenses of the board shall be paid out of the fees received from applicants and licensees. Members of the board shall receive a per diem established pursuant to § 4-7-10.4 and expenses at the same rate as other state employees while engaged in official duties.~~

Commented [SS8]: General update to be consistent with other boards.

~~36-19-9. Officers of board – Scope of rules – Bond required of treasurer.~~

~~The State Board of Funeral Service may elect, out of its own number, board shall annually elect from its members a president, a vice-president, and secretary-treasurer, and, pursuant to chapter 1-26, promulgate the rules as may be reasonable and proper to:~~

Commented [SS9]: General update to be consistent with other boards. Moved rulemaking authority to §36-19-12

- ~~(1) Establish the minimum physical standards of licensees' funeral establishments;~~
- ~~(2) Regulate the inspection of each funeral establishment;~~
- ~~(3) Establish the educational, training, reciprocity and renewal requirements for licensure; and~~
- ~~(4) However, the board may not regulate the method and manner of providing funeral service.~~

~~The treasurer of the board shall give bond in the sum of five thousand dollars with sufficient sureties to be approved by the board, conditioned for the honest and faithful discharge of the treasurer's duties. No member may serve as president for more than three consecutive terms.~~

~~36-19-10. Seal of board.~~

~~The State Board of Funeral Service shall be authorized to adopt and use a common seal.~~

Commented [SS10]: Moved to §36-19-12

~~36-19-11. Fees paid to treasurer – Use of fees.~~

~~All fees collected under the provisions of this chapter shall be paid to the treasurer of the State Board of Funeral Service, to be used for the purpose of defraying its necessary salaries and expenses.~~

~~36-19-12. General duties of board with respect to licenses Powers and duties of the board.~~

~~It shall be the duty of the State Board of Funeral Service to examine applicants for licenses as provided by this chapter; to keep all necessary records; receive registrations of trainees in funeral service; to control and issue reciprocal licenses and renewals of all other licenses as provided in this chapter; to revoke or suspend upon proper cause, and to provide hearings in such matters and to investigate any and all complaints originating from the violation of any section or sections of this chapter board has the following powers and duties:~~

Commented [SS11]: Updated to be consistent with other boards – needs to be reviewed to make sure it is reflective of funeral services

Commented [PM12R11]: We agree but will review prior to full board approval

- ~~(1) Administer, coordinate, and enforce the provisions of this chapter;~~
- ~~(2) Establish the education and training requirements for applicants, evaluate the qualifications of applicants and issue and renew licenses;~~
- ~~(3) Issue subpoenas, examine witnesses, administer oaths, conduct hearings, and, at its discretion, investigate allegations of violations of this chapter and impose penalties for any violations;~~
- ~~(4) Promulgate rules, pursuant to chapter 1-26, to:
 - ~~(a) Delineate qualifications for licensure;~~
 - ~~(b) Specify requirements for the renewal of licensure;~~
 - ~~(c) Establish standards of professional conduct;~~
 - ~~(d) Establish a schedule of disciplinary actions for violations of professional conduct;~~
 - ~~(e) Permit inactive licenses;~~
 - ~~(f) Establish procedures for collection and management of fees and payments;~~
 - ~~(g) Establish application, renewal, inactive, and late fees;~~~~

- (h) Adopt a code of ethics; and
- (i) Establish the standards of operating a funeral establishment;
- (5) Have available the names and addresses of persons currently licensed pursuant to the provisions of this chapter;
- (6) Employ personnel in accordance with its needs and budget;
- (7) Enter into such contracts as necessary to carry out its responsibilities under this chapter;
- (8) Establish a budget;
- (9) Submit reports of its operations and finances as required by § 4-7-7. 2;
- (10) Adopt an official seal by which it shall authenticate its proceedings, copies, records, acts of the board, and licenses;
- (11) Develop procedures for:
 - (a) Monitoring a license holder's compliance with the requirements of this chapter;
 - (b) Monitoring a license holder who is ordered by the board to perform certain acts;
 - (c) Identifying a license holder who presents a risk to the public; and
 - (d) Initiating appropriate actions regarding a license holder who presents a risk to the public;
- (12) Develop a system for monitoring complaints filed with the board, procedures for providing assistance to a person who wishes to file a complaint, and a schedule for disposing of complaints in a timely manner;
- (13) Communicate disciplinary actions to relevant state and federal authorities and to other state funeral director licensing authorities; and
- (14) Perform any other duties directly related to the administration of the provisions of this chapter.

No member of the board is liable for civil action for any act performed in good faith in the performance of the member's duties as prescribed by law.

36-19-13. Qualifications of inspector employed by board.

~~No person shall be employed as an inspector by the State Board of Funeral Service unless such person has been licensed in this state as an embalmer and funeral director, and has practiced funeral service, for at least five years prior to his appointment.~~

Commented [SS13]: Unnecessary. Qualifications for inspectors can be determined during contract process

36-19-14. License required to embalm, practice funeral service or maintain establishment.

No person shall embalm any dead human body or practice embalming, or direct or supervise funerals, practice funeral service, or maintain a funeral establishment in the State of South Dakota, without being licensed by the State Board of Funeral Service board.

36-19-17. License issued to previously licensed funeral director.

~~Every funeral director who, on July 1, 1963, held a license which had been duly issued under the laws of this state, is entitled to have his license renewed annually upon payment of renewal fees of not to exceed fifty dollars set by the State Board of Funeral Service, by rule promulgated pursuant to chapter 1-26.~~

Commented [SS14]: FROM BOARD OFFICE – Board no longer licenses funeral directors only

36-19-18. Licenses issued to funeral service trainees.

~~The State Board of Funeral Service board shall provide for registration of register trainees for license to practice funeral service. Trainees shall at all times remain registered with the board and shall pay an initial registration fee not to exceed twenty-five dollars set by the State Board of Funeral Service board, by rule promulgated pursuant to chapter 1-26.~~

Commented [SS15]: Clean-up

36-19-20. Application for license to practice funeral service – Examination.

~~Any person desiring to obtain a license to practice funeral service under this chapter shall make application to the State Board of Funeral Service. The application shall contain such information as the board may require and be upon a form prepared by the board. Upon receipt of the application, the board~~

Commented [SS16]: Board no longer administers exam. Passage of national exam added to § 36-19-21(6)

shall fix a date and place for the examination of the applicant of which notice shall be given to the applicant by mail. At such time and place, a designee of the board, a board member, or a board staff member selected by a majority of the board shall proceed to examine the applicant under such rules the board may promulgate pursuant to chapter 1-26.

36-19-21. Requirements for funeral service license – Scope of examination.

In order to obtain a license in the practice of funeral service, the ~~The board may issue a license to an applicant shall submit evidence that the applicant is a citizen of the United States or a resident of South Dakota; is at least eighteen years of age; is of good moral character; has sixty semester hours credit from a college or university in a course approved by the State Board of Funeral Service; has completed one year's course at a school of embalming, accredited by the board; has completed one year's work as a trainee embalmer funeral director in this state; and has passed an examination on the following subjects: embalming and care, disposition and preservation of the bodies of deceased persons, sanitation for the prevention of the spread of infectious or contagious diseases, and local health and sanitation ordinances and regulations relating to mortuary science~~ who:

Commented [SS17]: Updated to be consistent with other boards

- (1) Submits an application upon a form prescribed by the board;
- (2) Pays the application fee;
- (3) Is eighteen years of age or older;
- (4) Possess a degree or certificate from a program in mortuary science or funeral service accredited by the American Board of Funeral Service Education, Inc.;
- (5) Has completed one year's work as an embalmer trainee under an individual licensed pursuant to this chapter;
- (6) Has passed the National Board Examination as administered by the Conference of Funeral Service Examining Board; and
- (7) Has not have committed any act for which disciplinary action may be justified.

36-19-22. Time and place of examination – Minimum grade – Preservation of papers.

The examination required by § 36-19-21 shall be held at such times and places as the examining board shall deem most convenient for the applicants for examination, and, in accordance with the rules and regulations of the State Board of Funeral Service. Examination shall be in writing and the applicant must attain a grade of seventy-five per cent on each subject.

All examination papers of all applicants shall be kept on file by such board for a period of three years.

Commented [SS18]: Board no longer administers exam

36-19-23. National board certificate accepted in lieu of examination.

If an applicant for a license to practice funeral service has satisfactorily passed the national board examination given by the Conference of Funeral Service Examining Board of the United States, Incorporated, and is so certified to the State Board of Funeral Service by said Conference of Funeral Service Examining Board of the United States, Incorporated, said board may in its discretion accept the results of said national board examination in lieu of the written portion of the board's examination.

Commented [SS19]: Moved to § 36-19-6(2)

36-19-24. Licensing of licensee from another state.

Any holder of a license issued by the state authority in any other state maintaining a system and standard of examination for license to engage in the practice of funeral service, which in the judgment of the State Board of Funeral Service, is substantially the equivalent to that required in this state, may be issued such a license after passing a written examination on questions concerning the laws and rules of the State of South Dakota upon the payment of the applicable fee pursuant to § 36-19-25. Applicants holding a current license to practice funeral services in another state, who otherwise meet the qualifications of § 36-19-21, are exempt from the apprenticeship requirement in § 36-19-21(5) upon furnishing proof of a current, valid license, passage of the board approved national examination, and

Commented [SS20]: Updated

having practiced as a funeral director and embalmer for at least one year prior to application for licensure in South Dakota.

36-19-25. Fees for issuance and renewal of funeral service license.

A license to practice funeral service shall be issued and is renewable annually upon payment of a fee not to exceed one hundred twenty-five dollars set by the State Board of Funeral Service board, by rule promulgated pursuant to chapter 1-26.

36-19-25.1. Validation of receipt of prior initial license fees – Vested rights.

~~The receipt of fees for initial licenses issued by the Board of Funeral Service is validated and is of the same force and effect as if the board had authority to set and collect such fees.~~

~~If a person has a vested right in any property because of the lack of authority referred to in this section, and if no action or proceeding to enforce such right was commenced prior to July 1, 1984, such right is forever barred, and no such action or proceeding may be brought or be of any force or effect, or be maintainable in any court of this state.~~

Commented [SS21]: This is confusing and no one knows what it does

36-19-27. Application for funeral establishment license – Fee – Licensee in charge.

An application for a license to operate a funeral establishment shall be submitted for each location and shall be in writing on a form provided by the State Board of Funeral Service board and shall be accompanied by a fee not to exceed two hundred fifty dollars set by the State Board of Funeral Service board, by rule promulgated pursuant to chapter 1-26. The board may inspect a funeral establishment to verify compliance with § 36-19-28. A license to operate a funeral establishment may be granted upon approval and recommendation by the state board.

The application shall state the name of the individual who is duly licensed as either a funeral director or in funeral service and pursuant to this chapter who shall be in charge and responsible for all transactions conducted and services performed.

36-19-28. Sanitation, ventilation, and equipment required for funeral establishment.

~~No establishment shall be classified may be licensed as a funeral establishment unless it has a preparation room equipped with a sanitary floor of tile or linoleum, a table with sanitary top, suitable drainage and ventilation, and containing necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or transportation, and a display room containing a reasonably adequate stock of funeral caskets and shipping cases.~~

Commented [SS22]: Not necessary. Many of these provisions are already in administrative rule.

36-19-30. Funeral establishment managed by licensed individual.

Every funeral establishment shall be managed and conducted by a person licensed to practice funeral service, or who is a licensed funeral ~~embalmer, director~~ pursuant to this chapter.

36-19-31. Annual inspection Inspection of funeral establishment.

Each funeral establishment shall be inspected annually every three years by a member of the State Board of Funeral Service, or by an inspector employed by said board.

36-19-32. Change of location or transfer of funeral establishment.

The holder of any funeral establishment license who transfers the location of such establishment, or ceases to operate the same, or transfers such license to another, shall, within five days thereafter, notify the State Board of Funeral Service thereof board. In case of transfer of such license, the transferee shall promptly furnish the board the name of the individual who is duly licensed as either a funeral director or in funeral service pursuant to this chapter, and who will, and shall, be in charge and responsible for all transactions conducted and services performed therein. The board may inspect the new location of the funeral establishment to verify compliance with § 36-19-28.

36-19-33. License to legal representative of deceased funeral establishment manager.

~~In case of the death of a designated manager of a funeral establishment, who leaves such funeral establishment as part or all of his estate, the State Board of Funeral Service board shall issue to the legal representative of such deceased person, a funeral establishment license. The fee for the application and renewal of such license, and the time of payment thereof, shall be the same as required in § 36-19-37 for such licenses.~~

36-19-34. Association membership not required for license.

~~Membership in the South Dakota Embalmers and Funeral Directors Association shall never be a condition to obtaining or holding any license under this chapter.~~

Commented [SS23]: Unnecessary

36-19-35. Signature and seal of licenses.

~~All licenses issued under this chapter shall be signed by a majority of the State Board of Funeral Service and attested by its seal and shall specify by name the person to whom issued.~~

Commented [SS24]: Unnecessary.

36-19-36. Licenses not transferable – Display in place of business.

Every license issued under this chapter except the funeral establishment license, shall be nontransferable and shall be displayed by such licensee in a conspicuous place in his or her ~~the licensee's~~ office or place of business.

36-19-37. Expiration and annual renewal of licenses – Fee.

All licenses issued under the provisions of this chapter are valid only until the following thirty-first day of December ~~and shall be renewed annually.~~

~~If a licensee desires a renewal of such license, the State Board of Funeral Service shall grant it, except for cause in compliance with chapter 1-26. All applications for renewal shall be made within thirty days prior to the expiration of the license and shall be accompanied by a renewal fee not to exceed ~~two~~ three hundred fifty dollars, set by the board, by rule promulgated pursuant to chapter 1-26.~~

Commented [PM25]: Compromise to raise cap for future years, funds not needed now

36-19-38. Grounds for refusal, suspension or revocation of license.

~~The State Board of Funeral Service, acting in compliance with chapter 1-26, board may refuse to grant, may suspend, condition, or revoke any license if the license holder or the license applicant:~~

- ~~(1)~~ (1) Obtained the license by fraud or misrepresentation either in applying for the license or in passing the examination for the license;
- ~~(2)~~ (2) Alters a license;
- ~~(3)~~ (3) Uses intoxicants or drugs to such a degree as to render the person unfit to practice funeral service or funeral directing with reasonable skill and safety;
- ~~(4)~~ (4) Continues practice after sustaining any physical or mental disability which renders the further practice of the licensee's profession potentially harmful or dangerous;
- ~~(5)~~ (5) Has been convicted of a felony or crime involving moral turpitude. ~~However, upon the conviction of a holder of a valid license, of a felony or crime involving moral turpitude, the conviction shall immediately and automatically revoke the license dishonesty, any conduct of character likely to deceive or defraud the public, or related unprofessional conduct;~~
- ~~(4)~~ (4) Is not a person of good moral character;
- ~~(5)~~ (6) Is guilty of malpractice in the business of funeral service or funeral directing;
- ~~(6)~~ (7) Is guilty of willful violation of any section of this chapter, or any rule of the board, or any rule of the state or federal rule or any municipal board or department of health governing the disposition, shipment, or transportation of dead human bodies; or willfully fails to make any report required by law or by the rules of the board;

- ~~(7)~~(8) Signs a certificate stating that the person embalmed or prepared a dead human body for shipment or burial, whereas in fact, someone, other than the person signing the certificate, embalmed or prepared the dead human body for shipment or burial;
- ~~(8)~~(9) Pays or causes to be paid, directly or indirectly, a commission for the securing of business; or, directly or indirectly solicits such business. However the soliciting of members or the selling of stock in any cooperative burial association is not a violation of this subdivision;
- (10) Any practice or conduct which constitutes a danger to the health, safety, or welfare of the public or engaging in conduct which is unbecoming of a licensee or applicant of the board;
- (11) Discipline in another state or territory licensing board if the violation is also a violation of this chapter or any rules promulgated thereunder; and
- (12) Not reporting to the board discipline by another state or territory or a conviction of any felony criminal offense or any conviction of a criminal offense arising out of the practice regulated by this chapter.

If the license as funeral director establishment is held by a firm, corporation, association, or organization, the provisions of this section apply to the members of the board of directors, officers, and employees, as well as to the firm, corporation, association, or organization.

36-19-40. Appeal from revocation, suspension or refusal of license Disciplinary hearing – Decision - Appeal

~~An appeal from the decision of the State Board of Funeral Service may be taken as provided by chapter 1-26 The board may take disciplinary action or suspend, revoke, or reissue a license only after a hearing conducted by a hearing examiner appointed by the board or by a majority of the members of the board.~~

Commented [SS26]: Updated to be consistent with other boards

~~Any disciplinary proceeding or proceeding relative to the revocation or suspension of a license or certification shall otherwise conform to the procedure set forth in chapter 1-26 and Chapter 36-1C.~~

~~Any decision of the board to discipline, suspend, revoke, or reissue a license requires a majority vote of the board membership.~~

~~Any party feeling aggrieved by any acts, rulings, or decisions of the board, has the right to appeal under the provisions of chapter 1-26 and Chapter 36-1C.~~

36-19-41. Violation of chapter as misdemeanor.

Any person, firm or corporation conducting business or doing any act which is in violation of the provisions of this chapter is guilty of a Class 2 misdemeanor.

36-19-41.1. Injunction to prevent violations – Election of remedies.

The State Board of Funeral Service is empowered to commence actions for injunction for violation of this chapter or regulations hereunder as an alternate to criminal proceedings. The commencement of one proceeding by the board constitutes an election.

36-19-42. Severability of provisions.

~~If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.~~

Commented [SS27]: Severability provisions are not permitted any longer by LRC. They are unnecessary.

36-19-43. Federal trade commission rules – Board's option to comply with.

~~The Board of Funeral Services may comply with or exempt themselves from the federal trade commission rules on funeral industry practices pursuant to §§ 452.1 to 453.10, inclusive, volume 16 of the Code of Federal Regulations as amended and in effect on January 1, 1984.~~

Commented [SS28]: Provide for a code of ethics in rule. Rulemaking authority added in 36-19-12