



## Board of Funeral Service

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

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### **DRAFT TELECONFERENCE** **BOARD MEETING AGENDA**

**TO:** Board Members

**FROM:** Carol Tellinghuisen, Executive Secretary

**DATE:** August 16, 2023

**MEETING DATE:** September 14, 2023

**MEETING TIME:** 4:00 p.m. CDT / 3:00 p.m. MDT

**MEETING LOCATION:** Teleconference

Persons interested in joining the meeting may do so by calling the teleconference number at 1-866-705-2554. Key in the Guest Passcode: 263756.

#### **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 4:05 p.m. CDT-*5 minutes for the public to address the Board*
6. Approval of the minutes from May 10, 2023
7. FY financial update
8. Administrative Rules- ARSD 20:45 (Funeral Service) and ARSD 20:45:05 (Crematories and Cremations)
9. Inspection Update
10. The Conference (ICFSEB) Annual Meeting- Spring 2024 (Date TBD)
11. Schedule next meeting
12. Executive Session-pursuant to SDCL 1-25-2
  - a. Executive Secretary Contract
  - b. Complaints/Investigations
    - i. #170
    - ii. #174
13. Any other business coming in between date of mailing and date of meeting
14. Adjourn



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### DRAFT BOARD MINUTES FOR MAY 10, 2023 BOARD MEETING/TELECONFERENCE

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

Members Absent: Bart Fredericksen, Member  
Sharel Delzer, Lay Member

Others Present: Carol Tellinghuisen, Executive Secretary  
Brooke Tellinghuisen Geddes, Executive Assistant  
Megan Borchert, Attorney General's Office  
Jacob Dempsy, Attorney General's Office, joined at 2:14 p.m.  
CDT  
Jasper Diegel, SDFDA  
Michael Sharkey, SDFDA  
Kelly Hyke, SDFDA  
Mitch Steinhoff, SDFDA  
Shauna Kjos-Miotke, SDFDA  
Tim Bachman, Miller Funeral Home  
Brad Walker, NFDA

**Call to Order/Welcome and Introductions:** President Brennick called the meeting to order at 1:00 p.m. CDT.

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

**Corrections or additions to the agenda:** None

**Approval of the agenda:** Osthus made a motion to approve the agenda. Carlsen seconded the motion. **MOTION PASSED** by unanimous voice vote.

**Public Comment:** None.

**Approval of the minutes from November 17, 2022:** Carlsen made a motion to approve the minutes from November 17, 2022. Osthus seconded the motion. **MOTION PASSED** by unanimous voice vote.

**FY Financial Update:** Tellinghuisen Geddes reported fiscal year-to-date figures as of March 31, 2023: revenue of \$70,936.53; expenditures of \$71,680.65 and a cash balance of \$120,374.14.

**Legislative Updates:** Tellinghuisen Geddes informed the Board that HB 1015, which updates the funeral practice act, passed and will go into effect July 1, 2023. Diegel advised that SB 141 which updates the cremation laws also passed and will go into effect July 1, 2023. Tellinghuisen Geddes noted that an important licensure change on SB 141 is that it will require all crematories to identify their Certified Crematory Operators by July 1, 2023 to be in compliance with the law. Borchert mentioned SB 162 and SB 76. SB 162 updates the public meeting requirements and SB 76 is an expansion of SDCL 36-1D that provides for licensure by endorsement and already impacted the Funeral Board.

**Administrative Rules- ARSD 20:45 (Funeral Service) and ARSD 20:45:05 (Crematories and Cremations):** Carlsen made a motion to approve the administrative rules as presented with changes proposed. Jones seconded the motion. **MOTION PASSED** by unanimous voice vote.

**Election of Officers:** Carlsen made a motion to keep the current slate of officers with Brennick as president, Jones as Vice-President and Osthus as Secretary/Treasurer. Osthus seconded the motion. **MOTION PASSED** by unanimous voice vote.

**ICFSEB Annual Conference Update- Brennick:** Brennick provided a brief update of his experience at the ICFSEB annual conference and advised that he has prepared a report of his experiences that they can read through at their convenience.

**SDFDA FY25 Contract for Speaker (Vote):** Osthus made a motion to approve the FY25 contract with SDFDA for \$2,000 to contribute to a speaker for the Annual Convention. Jones seconded the motion. **MOTION PASSED** by unanimous voice vote.

**Crematory Operator Program/Adopt Approved Courses:** SDFDA recommended three crematory operator programs: NFDA, CANA and ICCFA. The board discussed these three options as well as The Matthews School of Cremation Crematory Operator Certification and other programs that may meet suggested program requirements. The Board decided to approve the four programs but also allow licensees to submit courses (at the discretion of the Board) that meet the following requirements and topics: Cremation equipment and maintenance, overview of the cremation process, combustion and incineration, shipping, receiving, tracking, and handling of remains, cremation safety and compliance, identification procedures and due diligence, record keeping, risks of liability, environmental laws and regulations and occupational safety and health administration laws and regulations. Carlsen made a motion to accept NFDA, CANA, ICCFA and Matthews School of Cremation Crematory Operator Certification as approved courses but also allow licensees to submit other courses that may meet the program requirements discussed. Jones seconded the motion. **MOTION PASSED** by unanimous voice vote.

**Annual Inspections:** Carlsen and Jones will be doing inspections. The law changes July 1<sup>st</sup> and will only require that one-third of establishments be inspected each year. Jones and Carlsen will split up the establishments appropriately.

**Pre-Arranged Funeral Trust Reporting Discussion:** The Board questioned the necessity of SDCL 55-11-9 which requires each licensed funeral establishment to report prearranged funeral trust contracts they have entered into the preceding calendar year. Borchert advised that the law also states the records are confidential. Therefore, the board questions the purpose of the reports. Tellinghuisen Geddes asked the SDFDA to pose the question to their membership as potential legislation of the association as it is more of a practice issue. Diegel stated she will bring the topic to the membership.

**Schedule Next Meeting:** The next meeting is scheduled for August 16, 2023.

Carlsen made a motion to enter executive session at 2:14 p.m. CDT. Osthus seconded the motion. **MOTION PASSED** by unanimous voice vote.

The Board exited executive session at 2:43 p.m. CDT.

**Executive Secretary Contract Renewal:** Osthus made a motion to approve the Executive Contract Renewal with Professional Licensing with a 4% cost-of-living increase. Carlsen seconded the motion. **MOTION PASSED** by unanimous voice vote.

**Application #2023-1:** Jones made a motion to deny applicant 2023-1 for licensure. Osthus seconded the motion. **MOTION PASSED** by unanimous voice vote.

**Complaints/Investigations:**

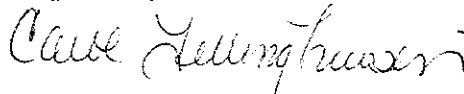
Jones made a motion to accept the Agreed Disposition and Order as presented that suspends Alex Nurnberg's funeral license (#1604) from May 11, 2023 to June 9, 2023. Osthus seconded the motion. **MOTION PASSED** by unanimous voice vote with Carlsen abstaining.

Complaint #170 is pending.

**Any other business coming in between date of mailing and date of meeting:** None.

Osthus made a motion to adjourn the meeting at 2:53 p.m. CDT. Carlsen 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.

DRAFT

STATE OF SOUTH DAKOTA  
MONTHLY OBJECT/SUB-OBJECT REPORT BY BUDGET UNIT  
FOR PERIOD ENDING: 06/30/2023

AGENCY BUDGET UNIT CENTER-5	09 09204 09204	HEALTH BOARD OF FUNERAL SERVICE - INFO BOARD OF FUNERAL SERVICE - INFO	CURRENT MONTH	YEAR-TO-DATE
CENTER	COMP	ACCOUNT	DESCRIPTION	
COMPANY NO	6503	PROFESSIONAL & LICENSING BOARDS		
092040061812	6503	510103000000000000	BOARD & COMM MBRS FEES	240.00
ACCT: 5101		EMPLOYEE SALARIES		240.00
092040061812	6503	510201000000000000	OAST-EMPLOYER'S SHARE	23.57
ACCT: 5102		EMPLOYEE BENEFITS		23.57
ACCT: 51		PERSONAL SERVICES		263.57
092040061812	6503	520301000000000000	AUTO-STATE OWNED-IN STATE	10.80
092040061812	6503	520303000000000000	AUTO-PRIV (IN-ST.) H/RTE	473.28
092040061812	6503	520310000000000000	LODGING/IN-STATE	85.00
092040061812	6503	520313000000000000	NON-EMPLOY. TRAVEL-IN ST.	68.00
092040061812	6503	520315000000000000	TAXABLE MEALS/IN-STATE	60.00
092040061812	6503	520330000000000000	NON-TAXABLE MEALS/IN-ST	60.00
092040061812	6503	520333000000000000	LODGING/OUT-OF-STATE	80.00
092040061812	6503	520333000000000000	NON-EMPLOY TRAVEL-OUT-ST.	80.00
ACCT: 5203		TRAVEL		697.08
092040061812	6503	520405000000000000	COMPUTER CONSULTANT	280.00
092040061812	6503	520406000000000000	LEGAL CONSULTANT	5,029.00
092040061812	6503	520409000000000000	MANAGEMENT CONSULTANT	00.00
092040061812	6503	520413000000000000	OTHER CONSULTING	00.00
092040061812	6503	520418000000000000	COMPUTER SERVICES-STATE	00.00
092040061812	6503	520420000000000000	CENTRAL SERVICES	00.00
092040061812	6503	520420400000000000	RECORDS MGMT SERVICES	00.00
092040061812	6503	520420700000000000	HUMAN RESOURCES SERVICES	00.00
092040061812	6503	520434000000000000	COMPUTER SOFTWARE MAINT	119.94
092040061812	6503	520458000000000000	TRUCK-DRAYAGE & FREIGHT	00.00
092040061812	6503	520459000000000000	INS PREMIUMS & SURETY BDS	00.00
092040061812	6503	520496000000000000	OTHER CONTRACTUAL SERVICE	7.00
ACCT: 5204		CONTRACTUAL SERVICES		5,435.94
092040061812	6503	520502000000000000	OFFICE SUPPLIES	00.00
092040061812	6503	520531000000000000	PRINTING-STATE	90.70
092040061812	6503	520535000000000000	POSTAGE	00.00
ACCT: 5205		SUPPLIES & MATERIALS		90.70
ACCT: 52		OPERATING EXPENSES		6,223.72
COMP: 6503		PROFESSIONAL & LICENSING BOARDS		6,487.29
CENTER: 092040061812				6,487.29
B UNIT: 09204				6,487.29

STATE OF SOUTH DAKOTA  
REVENUE SUMMARY BY BUDGET UNIT  
FOR PERIOD ENDING: 06/30/2023

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	275.00	70,431.25
ACCT:	4293		BUSINESS & OCCUP LICENSING (NON-GOVERNMENTAL)	275.00	70,431.25
ACCT:	42		LICENSES, PERMITS & FEES	275.00	70,431.25
092040061812	6503	4920045	NONOPERATING REVENUES	.00	1,130.28
ACCT:	4920		NONOPERATING REVENUE	.00	1,130.28
ACCT:	49		OTHER REVENUE	.00	1,130.28
CNTR:	092040061812			275.00	71,561.53
CNTR:	092040061			275.00	71,561.53
CNTR:	0920400			275.00	71,561.53
COMP:	6503			275.00	71,561.53
B UNIT:	09204			275.00	71,561.53

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

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	092000061812	1140000	94,801.76	DR	
COMPANY/SOURCE TOTAL 6503 618			94,801.76	DR *	
COMP/BUDG UNIT TOTAL 6503 09204			94,801.76	DR **	BOARD OF FUNERAL SERVICES
BUDGET UNIT TOTAL 09204			94,801.76	DR ***	

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## ARTICLE 20:45

### FUNERAL SERVICE

#### Chapter

- 20:45:01 ~~Meetings and hearings~~ Definitions.
- 20:45:02 General regulations.
- 20:45:03 Licensing requirements.
- 20:45:04 License fees, Repealed.
- 20:45:05 Crematories and cremations.

#### CHAPTER 20:45:01

#### MEETINGS AND HEARINGS DEFINITIONS

#### Section

- 20:45:01:01 State board meetings, Repealed.
- 20:45:01:02 Hearings, Repealed.
- 20:45:01:03 Reviewing of contested cases, Repealed.
- 20:45:01:04 Definitions.

**20:45:01:01. State board meetings.** ~~A regular meeting of the State Board of Funeral Service shall be held during the South Dakota state funeral director's convention. Special meetings may be called by the chair of the board as the chair considers necessary~~ Repealed.

**Source:** SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 19 SDR 35, effective August 27, 1992.

**General Authority:** ~~SDCL 36-19-6.~~

**Law Implemented:** ~~SDCL 36-19-6.~~

**20:45:01:02. Hearings.** ~~Notice of any charges against a licensee and notice of the time and place for a hearing on the charges shall be served upon a licensee not less than 20 days before the hearing. The hearing may be continued for a reasonable amount of time at the discretion of the board or its legal counsel. The licensee may be present at the hearing, either in person or by counsel, or both, and may request the board to subpoena witnesses that the licensee desires to be heard at the hearing. Witnesses shall be allowed the statutory fee and travel expenses. In any contested case, a transcript of the hearing shall be kept by a court reporter, or the hearing shall be tape recorded. If a transcript is ordered, the party ordering the transcript shall pay any cost or fee associated with the transcript.~~ Repealed.

**Source:** SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 30 SDR 215, effective July 14, 2004.

**General Authority:** ~~SDCL 36-19-9(5).~~

**Law Implemented:** ~~SDCL 36-19-12.~~

**Cross-References:** ~~Procedure in licensing matters, SDCL 1-26-16 to 1-26-19.1; Fees and mileage of witnesses, SDCL 19-5-1.~~

**20:45:01:03. Reviewing of contested cases.** ~~Petitions for review of decisions on contested cases may be made to the board pursuant to SDCL chapter 1-26. For the purpose of reviewing the decisions, the board may appoint a committee made up of a portion of the board's membership. The committee shall enter written findings. The findings of the committee must be reported to the full board for action. The board, in writing, shall adopt, reject, or modify the committee findings, and issue its written decision. Nothing in this section prevents or delays an aggrieved person from making an immediate appeal from any decision of the board to the circuit court as provided by SDCL chapter 1-26.~~ Repealed.

**Source:** SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 30 SDR 215, effective July 14, 2004.

**General Authority:** ~~SDCL 36-19-9(5).~~

**Law Implemented:** ~~SDCL 36-19-12.~~

**Cross Reference:** ~~Procedure for contested cases, SDCL 1-26-16 to 1-26-29.~~

**20:45:01:04. Definitions.** Words and phrases defined in SDCL 36-19-1 have the same meaning when used in this article. As used in this article, the term, sponsor, means a funeral director licensed in accordance with SDCL chapter 36-19 who is supervising a trainee in funeral service.

**Source:**

**General Authority:** SDCL 36-19-12.1.

**Law Implemented:** SDCL 36-19-1.

## **CHAPTER 20:45:02**

### **GENERAL REGULATIONS**

#### **Section**

- 20:45:02:01     Inspection of premises.
- 20:45:02:02     ~~Equipment required for funeral establishment~~ Preparation room -- Requirements.
- 20:45:02:03     ~~Maintenance of preparation room~~ Preparation room -- Maintenance.
- 20:45:02:03.01   Pricing of merchandise.
- 20:45:02:04     False listings, Repealed.
- 20:45:02:05     Written contract required.
- 20:45:02:06     Prearranged funeral contracts.
- 20:45:02:07     Length of time an unembalmed body may be kept.

**20:45:02:01. Inspection of premises.**—~~Each~~ The board shall inspect each funeral establishment shall be inspected in the following areas:

- ~~—— (1) Posting of establishment and licensee's licenses;~~
  - ~~—— (2) Stock of caskets;~~
  - ~~—— (3) Price of caskets, vaults, and other merchandise marked;~~
  - ~~—— (4) Use of written contract as required by § 20:45:02:05;~~
  - ~~—— (5) Possession of funeral car and mortuary cot;~~
  - ~~—— (6) General cleanliness of preparation room;~~
  - ~~—— (7) Possession of working ventilation fan in preparation room;~~
  - ~~—— (8) Possession of approved floor;~~
  - ~~—— (9) Possession of operable aspirator in preparation room;~~
  - ~~—— (10) Protection for water supply;~~
  - ~~—— (11) Cleanliness and sterilization of instruments, including hypodermic needles and syringes;~~
- and
- ~~—— (12) Possession and cleanliness of waste receptacle~~ in accordance with SDCL 36-19-31 to determine compliance with SDCL chapter 36-19 and this article.

The funeral establishment shall correct an existing violation within ~~20~~ twenty days, ~~and after~~ which the board shall reinspect the premises. An uncorrected violation is cause for revocation or suspension of license. The board may extend this time at its discretion. If at the time of renewal of the establishment license there is a violation, the establishment license may not be renewed, but a temporary license may be issued for ~~30~~ thirty days to allow time for correction of the violation. A funeral establishment shall pay the costs of the second and subsequent reinspections.

A funeral establishment shall be open for inspection between the hours of 9:00 a.m. to 5:00 p.m. Monday through Friday. Refusal of inspection is cause for not renewing an establishment license as well as grounds for ~~revoking an establishment license~~ licensure action.

**Source:** SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 30 SDR 215, effective July 14, 2004.

**General Authority:** ~~SDCL 36-19-9(2)~~ 36-19-12.1.

**Law Implemented:** ~~SDCL 36-19-28~~ 36-19-27, 36-19-31, 36-19-32.

**20:45:02:02. ~~Equipment required for funeral establishment~~ Preparation room --**

**Requirements.** ~~The term, funeral establishment, is defined at SDCL 36-19-1(4) and includes any place where embalming is performed.~~ The preparation room of a funeral establishment must be equipped with the following:

- (1) ~~Embalming~~ An embalming table;
- (2) Instruments for embalming;
- (3) ~~Sink~~ A sink connected to a public sewer or septic tank;
- (4) ~~Electric~~ An electric aspirator or hydroaspirator ~~which is equipped with an automatic vacuum breaker to prevent contamination of the water supply;~~
- (5) ~~Embalming~~ An embalming machine or equipment;
- (6) ~~Sanitary floor~~ A floor that is smooth, nonabsorbent, and easily cleaned and sanitized;
- (7) Ventilation;
- (8) ~~Exhaust~~ An exhaust fan;
- (9) Embalming fluid;
- (10) Hardening compound;
- (11) Rubber, plastic, latex, or vinyl goods;
- (12) Body pouches;
- (13) Disinfectant;
- (14) Rubber, latex, or vinyl gloves;
- (15) Aprons; and

(16) Receptacles for refuse, bandages, cotton, and other waste materials.

**Source:** SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 21 SDR 118, effective January 2, 1995; 30 SDR 215, effective July 14, 2004; 36 SDR 57, effective October 22, 2009.

**General Authority:** ~~SDCL 36-19-9(1)~~ 36-19-12.1.

**Law Implemented:** ~~SDCL 36-19-28~~ 36-19-38(14).

**20:45:02:03. ~~Maintenance of preparation room~~ Preparation room -- Maintenance.** All refuse, bandages, cotton, and other waste materials ~~shall~~ must be disposed of at the conclusion of each embalming case. All preparation rooms ~~shall~~ must be maintained in a clean and sanitary condition. All embalming tables, sinks, floors, receptacles, instruments, and other appliances used in the embalming of bodies ~~shall~~ must be thoroughly cleansed and sanitized with a suitable and an effective sanitizing agent immediately at the conclusion of each embalming case.

**Source:** SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** ~~SDCL 36-19-9~~ 36-19-12.1.

**Law Implemented:** ~~SDCL 36-19-28~~ 36-19-38(14).

**20:45:02:03.01. Pricing of merchandise.** A licensed funeral home shall display the price of caskets, vaults, and other merchandise.

**Source:**

**General Authority:** SDCL 36-19-12.1.

**Law Implemented:** SDCL 36-19-12.1.

**20:45:02:04. False listings.** ~~A listing in directories, newspapers, radio stations, television stations, or other printed or oral media indicating the location of a funeral establishment in a town, city, or community in which the listed funeral establishment is not located is considered false advertising and grounds for revocation of licenses~~ Repealed.

**Source:** SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** ~~SDCL 36-19-9.~~

**Law Implemented:** ~~SDCL 36-19-12.~~

**20:45:02:05. Written contract required.** At the time funeral arrangements are made, a funeral establishment shall give to the ~~person making or ordering a funeral purchaser~~ a written contract ~~which contains~~ containing the following:

(1) Any service that has been or will be performed, including the removal of the body and transportation, ~~and;~~ any merchandise selected; ~~and the itemized price for any service and merchandise;~~

(2) The supplemental items of service or merchandise requested and the price of each item;

(3) Insofar as it can be specified at that time, the items for which the funeral director will advance money as an accommodation; and

(4) The terms ~~or~~ and method of payment.

The funeral contract ~~shall~~ must be signed by the purchaser and a funeral home representative. A copy of the funeral contract ~~shall~~ must be given to the purchaser upon signing. A copy of the contract ~~shall~~ must also be retained by the funeral establishment for ten years after completing the contracted services.

**Source:** SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 30 SDR 215, effective July 14, 2004.

**General Authority:** SDCL ~~36-19-9(5)~~ 36-19-12.1.

**Law Implemented:** SDCL ~~36-19-9~~ 36-19-12.1.

**20:45:02:06. Prearranged funeral contracts.** ~~A prearranged funeral contract includes any transaction in which a person, or someone on the person's behalf, before the person's death, contracts with a funeral establishment for the purchase or rental of personal property or professional services for the final disposition of the person's body. A prearranged funeral shall~~ must be contracted for on a form prepared by the funeral establishment. The form ~~shall~~ must comply with SDCL chapter 55-11 and ~~shall~~ must be in triplicate. One copy ~~shall~~ must be kept in the funeral establishment. One copy ~~shall~~ must be delivered to the purchaser or beneficiary of the fund. One copy ~~shall~~ must be delivered to the bank, federal credit union, or savings and loan association, if applicable deposited in a banking institution or association as directed by SDCL 55-11-2. Any funeral establishment and licensee, who is a party to a prearranged funeral contract, must be knowledgeable of and must fully comply with SDCL chapter 55-11, and any violation of SDCL chapter 55-11 is grounds for revocation or suspension of a license. Any prearranged funeral contract funded by an insurance policy purchased from or through a funeral establishment for the purpose of paying, in whole or in part, for the purchase or rental of personal property and professional services for the final disposition of a body requires the funeral establishment to prepare a form itemizing ~~such~~ the property and services and to deliver a copy to the purchaser or beneficiary of the contract, ~~and to retain a~~ A copy of the contract must also be retained by the funeral establishment for ten years after completing the contacted services.

**Source:** SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 30 SDR 215, effective July 14, 2004.

**General Authority:** SDCL ~~36-19-9(5)~~ 36-19-12.1.

**Law Implemented:** SDCL ~~36-19-9(5)~~ 55-11-2, 55-11-7, 55-11-9.

**20:45:02:07. Length of time an unembalmed body may be kept.** An unembalmed body may be kept no longer than ~~24~~ twenty-four hours from the time of death. Within ~~24~~ twenty-four hours from the time of death, the body ~~shall~~ must be refrigerated, embalmed, ~~cremated~~, or buried in the ground. Any deviation from the foregoing requirements may only occur by an order of a court of competent jurisdiction or written directive of a coroner.

**Source:** 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 30 SDR 215, effective July 14, 2004.

**General Authority:** SDCL ~~36-19-9(5)~~ 36-19-12.1.

**Law Implemented:** SDCL 34-26-15.

## **CHAPTER 20:45:03**

### **LICENSING REQUIREMENTS**

#### **Section**

- 20:45:03:01 Minimum qualifications of trainee.
- 20:45:03:02 Traineeship in funeral service.
- 20:45:03:02.01 Mortuary student trainee, Repealed.
- 20:45:03:03 College coursework requirements, Repealed.
- 20:45:03:03.01 Acceptance of National Board Examination, Repealed.
- 20:45:03:04 Filing of application, Repealed.
- 20:45:03:04.01 Incomplete application.
- 20:45:03:05 Failure to pass examination, Repealed.
- 20:45:03:06 Repealed.
- 20:45:03:07 Renewal of lapsed license.
- 20:45:03:08 Fees.

**20:45:03:01. Minimum qualifications of trainee.** An applicant for registration as a trainee in funeral service shall have a high school education or a high school equivalent education, be at least ~~18~~ eighteen years of age, and be of good moral character.

**Source:** SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** SDCL ~~36-19-9~~ 36-19-12.1.

**Law Implemented:** SDCL ~~36-19-9~~ 36-19-1(5), 36-19-12(1), 36-19-18.

**20:45:03:02. Traineeship in funeral service.** ~~A trainee in funeral service must complete one year's work of traineeship before being eligible for licensure. For purposes of this rule section, one year's work is~~ 12 twelve months, either consecutive or non-consecutive, and in no event may the traineeship be less than ~~2,080~~ two thousand eighty hours. Although the ~~12-month~~ twelve-month period is not required to be completed in consecutive succession, a trainee must reapply for registration if the trainee seeks to resume duties after being terminated by a sponsor, or if the trainee changes sponsors for any reason. The traineeship may be served under different funeral ~~service~~ licensees directors licensed in accordance with SDCL chapter 36-19 and in different funeral establishments licensed ~~by the state of South Dakota~~ in accordance with SDCL chapter 36-19. The trainee must be a citizen of the United States or a resident of South Dakota. The traineeship ~~may~~ must be completed in one-month segments, ~~or unless in special circumstances~~ good cause is provided to the board, the traineeship may be completed in segments of time that are otherwise acceptable to the board so long as the total traineeship hours are not less than ~~2,080~~ two thousand eighty hours. The ~~Board of Funeral Service~~ board may extend the ~~12~~ twelve months of traineeship at its discretion for ~~unusual circumstances~~ good cause.

A funeral-service licensee director may not sponsor more than one trainee at a time. The sponsoring funeral-service licensee director is fully responsible for the trainee's actions and work in funeral service. The sponsor shall notify the board immediately of the termination or temporary discontinuance of supervision of a trainee.

~~To maintain licensure.~~ The the trainee shall file with the board at least ~~25~~ twenty-five acceptable embalming case reports on forms provided by the board ~~for the purpose~~, along with ~~12~~ twelve monthly report cards. The trainee shall assist in the direction of at least ~~25~~ twenty-five funerals and present ~~5~~ five sets of arrangements. ~~All~~ The trainee must perform all work ~~shall be performed as a trainee~~ under the supervision of the trainee's registered funeral service sponsor ~~or another licensee in the sponsor's establishment.~~

Both the sponsor and the trainee must notify the board if a traineeship is terminated. The traineeship may be reinstated if the trainee applies again to the board. A traineeship may be completed before or after completing mortuary college.

Any funeral-service licensee director, including a sponsor or the owner of a funeral establishment, who allows a person to do the work of a trainee when that person is not registered with the board or when that person has completed the traineeship program, is subject to ~~license revocation~~ licensure action.

**Source:** SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 19 SDR 35, effective August 27, 1992; 21 SDR 118, effective January 2, 1995; 30 SDR 215, effective July 14, 2004.

**General Authority:** SDCL ~~36-19-9(3)~~ 36-19-12.1.

**Law Implemented:** SDCL 36-19-18, 36-19-38(7).

**20:45:03:02.01. Mortuary student trainee.** ~~Any student enrolled in a course of study from a college of mortuary science accredited by the American Board of Funeral Service Education, Inc.~~

~~may perform the same duties as a trainee if the student provides, to the board, proof of enrollment in an accredited course of study and of obtaining a mortuary student certificate to practice as a mortuary student trainee. This practice does not apply toward the 12 months of traineeship as required by § 20:45:03:02 but may apply to the student's education Repealed.~~

**Source:** 37 SDR 237, effective June 30, 2011.

**General Authority:** ~~SDCL 36-19-9(3).~~

**Law Implemented:** ~~SDCL 36-19-18.~~

**20:45:03:03. College coursework requirements.** ~~An applicant for a funeral service license must successfully complete the prescribed course of study from a college of mortuary science accredited by the American Board of Funeral Service Education, Inc. In addition, the applicant must complete an academic course requirement of 60 semester hours credit from an accredited college or university. The board requires coursework in each of the following areas:~~

- ~~—— (1) Communications or the equivalent, for example:
  - ~~—— (a) Speech;~~
  - ~~—— (b) English composition;~~~~
- ~~—— (2) Social science or the equivalent, for example:
  - ~~—— (a) Sociology;~~
  - ~~—— (b) Psychology;~~~~
- ~~—— (3) Natural science or the equivalent, for example:
  - ~~—— (a) Chemistry;~~
  - ~~—— (b) Biology;~~
  - ~~—— (c) Microbiology;~~
  - ~~—— (d) Anatomy;~~~~
- ~~—— (4) Business or the equivalent, for example:~~

- ~~———— (a) Accounting;~~
- ~~———— (b) Business law;~~
- ~~———— (c) Business management; and~~
- ~~———— (5) Electives Repealed.~~

**Source:** SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 19 SDR 35, effective August 27, 1992; 21 SDR 118, effective January 2, 1995; 34 SDR 101, effective October 24, 2007; 36 SDR 57, effective October 22, 2009; 37 SDR 237, effective June 30, 2011.

**General Authority:** ~~SDCL 36-19-9(3).~~

**Law Implemented:** ~~SDCL 36-19-21.~~

**Reference:** ~~The Conference of Funeral Service State Board Rosters and Accredited Mortuary Schools, September, 1994. The Conference of Funeral Service Examining Boards, First Security Bank Building, 2404 Washington Blvd., Suite 1000, Ogden, UT 84401. Copies may be obtained free of charge from the South Dakota Board of Funeral Service, 810 N. Main Street, Suite 298, Spearfish, SD 57783, phone (605) 642-1600, FAX (605) 722-1006.~~

**20:45:03:03.01. Acceptance of National Board Examination.** ~~If an applicant for a license to practice mortuary science has satisfactorily passed the National Board Examination given by the Conference of Funeral Service Examining Boards of the United States, Incorporated, and is so certified by the commissioner of the conference, the State Board of Funeral Service may accept the results of the National Board Examination. In addition, the applicant shall successfully pass an examination on laws of the state of South Dakota and the rules of the State Board of Funeral Service. The examination shall include questions pertaining to registration of deaths, embalming, transportation, disposition of dead human bodies, and funeral directing. In order to accept the results of the National Board Examination, the State Board of Funeral Service shall first determine that the~~

knowledge and skills assessed by the examination adequately and accurately evaluate the knowledge and skills needed for actual job performance Repealed.

**Source:** 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

**General Authority:** ~~SDCL 36-19-9.~~

**Law Implemented:** ~~SDCL 36-19-23.~~

**20:45:03:04. Filing of application.** ~~An applicant for licensure as a funeral director shall submit a complete application to the Board of Funeral Service at least 15 days before the examination date on a form procured from the secretary of the board. The board shall timely approve or disapprove the application and shall forthwith notify the applicant of the approval or disapproval. Only approved applicants shall be allowed to sit for the examination. The application shall contain identifying information, including the applicant's full name, age, and mailing address; a record of the applicant's education; a certificate of apprenticeship; personal recommendations; and a certificate of the national conference examination. The applicant shall furnish certified high school, college, and mortuary college transcripts from accredited schools containing a list of subjects completed with the individual grades and credits. The applicant shall include a photo and the application fee required by § 20:45:04:02 Repealed.~~

**Source:** SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 30 SDR 215, effective July 14, 2004.

**General Authority:** ~~SDCL 36-19-9(3).~~

**Law Implemented:** ~~SDCL 36-19-20.~~

**20:45:03:04.01. Incomplete application.** A licensure application deemed incomplete by board staff must be completed within one year from the date received by the board, or the board

must consider it withdrawn. The executive secretary shall notify the applicant if an application is designed withdrawn. The applicant is not precluded from reapplying, but all required documents, information, non-refundable fees, and application materials must be resubmitted.

**Source:**

**General Authority:** SDCL 36-19-12.1.

**Law Implemented:** SDCL 36-19-12.1, 36-19-18, 36-19-21, 36-19-27.

**20:45:03:05. Failure to pass examination.** ~~An applicant who fails the examination may appear before the board within one year after the first examination and may take and complete a second examination. The second examination may be taken without an additional fee. An individual must complete the entire application process and pay the appropriate fee in order to take a third or any subsequent examination.~~ Repealed.

**Source:** SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 30 SDR 215, effective July 14, 2004.

**General Authority:** ~~SDCL 36-19-9(3).~~

**Law Implemented:** ~~SDCL 36-19-20.~~

**20:45:03:07. Renewal of lapsed license.** A licensed funeral ~~service~~ director who does not renew the license may have licensure restored at any time within three years from the date of lapse by applying to the ~~Board of Funeral Service~~ board and paying the license fee required in ~~§ 20:45:04:03~~ § 20:45:03:08 for each full calendar year the license has been lapsed. ~~Licensees A licensee~~ whose ~~licenses have~~ license is lapsed for more than three years must complete requirements for licensure ~~as required~~ in SDCL chapter 36-19 and § 20:45:03.

**Source:** SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 18 SDR 59, effective October 2, 1991; 30 SDR 215, effective July 14, 2004.

**General Authority:** ~~SDCL 36-19-9(3)~~ 36-19-12.1.

**Law Implemented:** ~~SDCL 36-19-12~~ 36-19-12.1, 36-19-37.

**20:45:03:08. Fees.** The license fees for licenses and registrations issued by the board are as follows and are nonrefundable:

- (1) Trainee registration fee, twenty-five dollars;
- (2) Funeral director license application fee, one hundred and twenty-five dollars;
- (3) Annual funeral director license renewal fee; one hundred and twenty-five dollars;
- (4) Funeral establishment license application fee, two hundred and fifty dollars; and
- (5) Annual funeral establishment license renewal fee, two hundred and fifty dollars.

**Source:**

**General Authority:** SDCL 36-19-12.1.

**Law Implemented:** SDCL 36-19-18, 36-19-25, 36-19-27, 36-19-37.

## **CHAPTER 20:45:04**

### **LICENSE FEES**

**(Repealed)**

Section

- 20:45:04:01    Registration fee -- Trainee, Repealed.
- 20:45:04:02    Repealed, Repealed.
- 20:45:04:03    Annual renewal fee -- Funeral director's license, Repealed.
- 20:45:04:04    Application fee -- Funeral establishment license, Repealed.

20:45:04:05     Annual renewal fee -- Funeral establishment license, Repealed.  
20:45:04:06     Repealed.  
20:45:04:07     Application fee -- Funeral service license, Repealed.  
20:45:04:08     Annual renewal fee -- Funeral service license, Repealed.

**20:45:04:01. Registration fee -- Trainee.** ~~The registration fee for a trainee in funeral service is \$25~~ Repealed.

**Source:** 4 SDR 27, effective November 8, 1977; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 18 SDR 59, effective October 2, 1991.

**General Authority:** ~~SDCL 36-19-9.~~

**Law Implemented:** ~~SDCL 36-19-18.~~

**20:45:04:03. Annual renewal fee -- Funeral director's license.** ~~The annual renewal fee for a funeral director's license is \$50~~ Repealed.

**Source:** 4 SDR 27, effective November 8, 1977; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 18 SDR 59, effective October 2, 1991.

**General Authority:** ~~SDCL 36-19-9.~~

**Law Implemented:** ~~SDCL 36-19-25.~~

**20:45:04:04. Application fee -- Funeral establishment license.** ~~The application fee for a funeral establishment license is \$250~~ Repealed.

**Source:** 4 SDR 27, effective November 8, 1977; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 18 SDR 59, effective October 2, 1991; 34 SDR 101, effective October 24, 2007; 36 SDR 57, effective October 22, 2009.

**General Authority:** ~~SDCL 36-19-27.~~

**~~Law Implemented:~~** SDCL 36-19-27.

**20:45:04:05. Annual renewal fee -- Funeral establishment license.** ~~The annual renewal fee for each separate funeral establishment license is \$250~~ Repealed.

**Source:** 4 SDR 27, effective November 8, 1977; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 18 SDR 59, effective October 2, 1991; 34 SDR 101, effective October 24, 2007; 36 SDR 57, effective October 22, 2009.

**~~General Authority:~~** SDCL 36-19-37.

**~~Law Implemented:~~** SDCL 36-19-37.

**20:45:04:07. Application fee -- Funeral service license.** ~~The application fee for a funeral service license is \$125~~ Repealed.

**Source:** 21 SDR 118, effective January 2, 1995; 34 SDR 101, effective October 24, 2007; 36 SDR 57, effective October 22, 2009.

**~~General Authority:~~** SDCL 36-19-25.

**~~Law Implemented:~~** SDCL 36-19-25.

**20:45:04:08. Annual renewal fee -- Funeral service license.** ~~The annual renewal fee for a funeral service license is \$125~~ Repealed.

**Source:** 21 SDR 118, effective January 2, 1995; 34 SDR 101, effective October 24, 2007; 36 SDR 57, effective October 22, 2009.

**~~General Authority:~~** SDCL 36-19-25.

**~~Law Implemented:~~** SDCL 36-19-25.

## CHAPTER 20:45:05

## CREMATORIES AND CREMATIONS

### Section

- 20:45:05:01 Definition of terms, Repealed.
- 20:45:05:02 Applicability, Repealed.
- 20:45:05:03 Application for licensure or renewal of license – Fee, Repealed.
- 20:45:05:04 Issuance of license – Denial, Repealed.
- 20:45:05:05 Annual inspection -- Correction of violations, Repealed.
- 20:45:05:06 Suspension or revocation of license.
- 20:45:05:07 Human remains defined, Repealed.
- 20:45:05:08 Physicians and medical facilities disposing of human remains required to be licensed, Repealed.
- 20:45:05:09 Container requirements for accepting pathological waste, Repealed.
- 20:45:05:10 Occupant protection, Repealed.
- 20:45:05:11 Refrigeration requirements.
- 20:45:05:12 Embalming requirements, Repealed.
- 20:45:05:13 Construction standards, Repealed.
- 20:45:05:14 Notice of construction or alteration of crematories, Repealed.
- 20:45:05:15 Fire safety standards.
- 20:45:05:16 Fire safety requirements for crematories attached to funeral establishments.

**20:45:05:01. Definition of terms.** ~~Terms defined in SDCL 34-26A-1 have the same meaning in this chapter. In addition, terms~~ Terms used in this chapter mean:

- ~~(1) "Ambulatory surgery center," as defined in SDCL 34-12-1.1(1);~~
- ~~(2) "Authorizing agent," as defined in SDCL 34-26A-2;~~

~~(3) "Biohazard label," a distinctive red or orange label used to identify pathological waste as potentially infectious;~~

~~(4) "Body parts," limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research; or human bodies or any portion of bodies that have been donated to science for medical research purposes;~~

~~(5) "Funeral establishment," as defined in SDCL 36-19-1(4);~~

~~(6) "Hospital," as defined in SDCL 34-12-1.1(4);~~

~~(7) "Medical laboratory," a place where scientific examination on human tissue and organ specimens is conducted to aid in medical diagnosis or treatment;~~

~~(8) "Pathological waste," human tissues, organs, and blood or body fluids in liquid or semiliquid form that are removed from a person for medical purposes during treatment, surgery, biopsy, or autopsy;~~

~~(9) "Pulverization," the reduction of identifiable bone fragments after the completion of the cremation process to granulated particles by manual or mechanical means;~~

~~(10) "Physician," a person who is licensed or approved to practice medicine pursuant to in accordance with SDCL chapter 36-4;~~

~~(11) "Sanitary condition," free of dirt, foreign particles, blood stains, offensive odors, and insects; and~~

~~(12) "Universal precautions," procedures for handling human remains and pathological waste which are intended to prevent parenteral, mucous membrane, and non-intact skin exposures of persons to disease-causing agents Repealed.~~

**Source:** 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:01, 26 SDR 87, effective December 9, 1999.

**General Authority:** SDCL 34-26A-33.

**~~Law Implemented:~~** SDCL 34-26A-33.

**20:45:05:02. Applicability.** ~~This chapter applies to new crematories, to existing crematories in operation on April 2, 1989, and to subsequent renovations, additions, and changes in space use of crematories licensed by the board~~ Repealed.

**Source:** 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:02, 26 SDR 87, effective December 9, 1999.

**~~General Authority:~~** SDCL 34-26A-33.

**~~Law Implemented:~~** SDCL 34-26A-33.

**20:45:05:03. Application for licensure or renewal of license -- Fee.** ~~For new crematories or crematories not previously licensed, application forms for licensure as a crematory authority may be requested from the board. For license renewals, the board shall mail each year to each licensed crematory authority notice that license renewal is due. Unless renewed pursuant to SDCL chapter 34-26A and this chapter, licenses issued under SDCL chapter 34-26A expire on December 31 following their issuance or renewal. A license may not be transferred or assigned by the crematory authority establishment. A person submitting an application for the following entities must submit the information as follows::~~

(1) ~~A sole proprietorship must submit the applicant's full name and address for both the business and applicant's residence;~~

(2) ~~A partnership must submit the full name and address of each partner;~~

(3) ~~An association must submit the name and address of every member of the board of directors; or~~

(4) ~~A corporation must submit the name and address of every officer, director, and shareholder holding more than 25 percent of the corporate stock.~~

~~An applicant must also pay the fee set forth in SDCL 34-26A-4 when submitting the application to the board.~~ Repealed.

**Source:** 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:03, 26 SDR 87, effective December 9, 1999; 30 SDR 215, effective July 14, 2004.

**General Authority:** ~~SDCL 34-26A-33.~~

**Law Implemented:** ~~SDCL 34-26A-4, 34-26A-33.~~

**20:45:05:04. Issuance of license -- Denial.** ~~The board shall issue or renew a license after payment of the fee required by SDCL 34-26A-4, ascertainment that the facts set forth in the application for licensure are true and complete, and evidence, which may be determined by inspection by the board, that the applicant meets the requirements of SDCL chapter 34-26A and this chapter. The board may refuse to issue or renew a license if the applicant does not meet the requirements of this section. The applicant may contest the denial pursuant to SDCL chapter 1-26. The most current license issued by the board must be posted on the premises of the crematory in a place conspicuous to the public. The license certificate remains the property of the board.~~

**Source:** 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:04, 26 SDR 87, effective December 9, 1999.

**General Authority:** ~~SDCL 34-26A-33.~~

**Law Implemented:** ~~SDCL 34-26A-4, 34-26A-33.~~

**20:45:05:05. Annual inspection -- Correction of violations.** ~~The board shall annually inspect the premises of licensed crematories for compliance with the provisions of SDCL chapter 34-26A and this chapter. The inspection shall take place during business hours and shall be conducted by an authorized board inspector after presentation of identification. The scope of the inspection is limited to those areas provided for in SDCL chapter 34-26A and this chapter. An~~

~~existing violation must be corrected within 60 days after the board's inspection, unless an extension of time is approved by the board. The crematory may be reinspected by the board to verify correction, with the costs and fees of the reinspection being assessed to and paid by the crematory authority. A crematory shall be open for inspection from the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday. Refusal of inspection is cause for not renewing a crematory license, as well as grounds for revoking a crematory license~~ Repealed.

**Source:** 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:05, 26 SDR 87, effective December 9, 1999; 30 SDR 215, effective July 14, 2004.

**General Authority:** ~~SDCL 34-26A-33.~~

**Law Implemented:** ~~SDCL 34-26A-4, 34-26A-33.~~

**20:45:05:06. Suspension or revocation of license.** ~~Pursuant to~~ In accordance with SDCL chapter 1-26 ~~and SDCL chapter 36-1C,~~ the board may suspend ~~or,~~ revoke, or impose other disciplinary actions against a license issued under SDCL chapter 34-26A on any of the following grounds:

- (1) Violation ~~by the crematory authority~~ of the provisions of SDCL chapter 34-26A or this chapter;
- (2) Failure to allow board inspections; ~~and~~
- (3) Failure to correct violations as outlined by the board inspector in the inspection report in accordance with § 20:45:05:05;
- (4) Transferring, assigning, or altering a crematory license;
- (5) Failure to remit payment for license;
- (6) Failure to annually renew license before December 31;
- (7) Failure to post the crematory license in a place conspicuous to the public;

(8) Engaging in any practice or conduct that constitutes a danger to the health, safety, or welfare of the public; or

(9) Failure to maintain adequate safety and sanitary conditions or other requirements of crematories, as set forth in SDCL chapter 34-26A or this chapter.

**Source:** 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:06, 26 SDR 87, effective December 9, 1999.

**General Authority:** ~~SDCL 1-26-29, 34-26A-5.1, 34-26A-33, 34-26A-34.~~

**Law Implemented:** ~~SDCL 34-26A-4, 34-26A-5.1, 34-26A-33, 34-26A-34.~~

**20:45:05:07. Human remains defined.** ~~For purposes of this chapter, human remains are the body or part of a body of a deceased person or part of a body or limb that has been removed from a living person, including the body or body part in any stage of decomposition which is entrusted to a crematory authority by the authorizing agent for the express purpose of cremation as the lawful disposition of the body after the person's death.~~ Repealed.

**Source:** 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:07, 26 SDR 87, effective December 9, 1999.

**General Authority:** ~~SDCL 34-26A-33.~~

**Law Implemented:** ~~SDCL 34-26A-33.~~

**20:45:05:08. Physicians and medical facilities disposing of human remains required to be licensed.** ~~A physician, hospital, ambulatory surgery center, or medical laboratory which cremates human remains other than pathological waste must be licensed as a crematory authority by the board.~~

**Source:** 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:08, 26 SDR 87, effective December 9, 1999.

**General Authority:** ~~SDCL 34-26A-33.~~

~~Law Implemented: SDCL 34-26A-5, 34-26A-33.~~

~~20:45:05:09. Container requirements for accepting pathological waste. A crematory authority may not accept for disposal pathological waste which:~~

- ~~(1) Is in a container showing evidence of leakage of bodily fluids;~~
- ~~(2) Does not have a biohazard label securely and conspicuously affixed to the container;~~
- ~~(3) Is not sealed in either double impervious plastic bags or a single impervious plastic bag resistant to spillage;~~
- ~~(4) Is not in a container that allows for ease of handling;~~
- ~~(5) Is not in a container composed of readily combustible materials suitable for cremation; or~~
- ~~(6) Does not provide protection for the health, safety, and personal integrity of the crematory personnel.~~

~~The biohazard label must contain a notice that reads substantially as follows:~~

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**~~WARNING~~**

**~~THESE HUMAN REMAINS CONTAIN POTENTIALLY HAZARDOUS  
INFECTIOUS AGENTS, USE UNIVERSAL PRECAUTIONS IN  
HANDLING.~~**

**~~OBSERVE THE FOLLOWING PRECAUTIONS WHILE IN CONTACT  
WITH REMAINS:~~**

**~~Wear gloves while handling these remains, particularly if open cuts, abrasions,  
or other lesions are present on your hands. Exercise caution while in contact~~**

~~with blood or other body fluids and your mucous membrane surfaces, such as your eyes and mouth. Wash hands thoroughly and promptly after contact with body fluids and after direct handling of remains.~~

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**Source:** 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:09, 26 SDR 87, effective December 9, 1999.

**General Authority:** ~~SDCL 34-26A-33.~~

**Law Implemented:** ~~SDCL 34-26A-33.~~

**Cross-References:**

~~Solid waste disposal, SDCL chapter 34A-6;~~

~~Solid waste, art 74:27.~~

**20:45:05:10. Occupant protection.** ~~A crematory covered by this chapter must be constructed, arranged, equipped, maintained, and operated to avoid injury or danger to occupants and the public. The crematory authority must provide the physical resources, personnel, and technical expertise necessary to meet at least the following requirements:~~

- ~~(1) Maintain the crematory premises in a sanitary condition at all times;~~
- ~~(2) Provide handwashing facilities consisting of hot and cold running water, towel dispenser with single service towels or hand drying device, and hand cleanser in all preparation and holding areas. The facilities must be readily accessible to crematory personnel;~~
- ~~(3) Provide equipment, flooring, and interior finishes in preparation and holding areas which are impervious to liquids and gases and which can be readily disinfected;~~
- ~~(4) Provide outside ventilation by windows or forced air ventilation so arranged that it is not offensive to the public;~~
- ~~(5) Provide access by crematory personnel to a first aid emergency kit and eye wash kit;~~

~~(6) Provide formal orientation and ongoing education for all crematory personnel in the practice of infection control and prevention;~~

~~(7) Ensure that crematory personnel follow guidelines for universal precautions for the safe handling of human remains and pathological waste in accordance with the recommendations of the Centers for Disease Control, U. S. Public Health Service, as published in "Recommendations for Prevention of HIV Transmission in Health Care Settings," August 21, 1987, Centers for Disease Control and Prevention. Recommendations for Prevention of HIV Transmission in Health Care Settings. MMWR 1987:36 (Supp. No. 2S); #5S-18S; Centers for Disease Control and Prevention. "Update: Universal Precautions for Prevention of Transmission of HIV, HBV, and Other Bloodborne Pathogens in Health Care Settings." MMWR 1988:37; 377-382, 387-8; Centers for Disease Control and Prevention (CDC). Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Patients During Exposure-Prone Invasive Procedures. Morbidity and Mortality Weekly Report (MMWR) 1991:40 (No. RR-8); #1-9; "Update: Universal Precautions for Prevention of Transmission of Human Immunodeficiency Virus, Hepatitis B Virus, and Other Bloodborne Pathogens in Health Care Settings," June 24, 1988, and Department of Labor, Occupational Safety and Health Administration. Occupational Exposure to Bloodborne Pathogens; 29 C.F.R. § 1910.1030 (July 1, 1993); and~~

~~(8) Ensure that the funeral director has taken all necessary steps to remove any pacemaker, hazardous implants, or other implants powered by batteries from the human remains prior to delivery~~  
Repealed.

**Source:** 15 SDR 146, effective April 2, 1989; transferred from 44:21:01:10, 26 SDR 87, effective December 9, 1999.

**General Authority:** SDCL 34-26A-33.

**Law Implemented:** SDCL 34-26A-3, 34-26A-33.

**References:** ~~"Recommendations for Prevention of HIV Transmission in Health-Care Settings," August 21, 1987, and "Update: Universal Precautions for Prevention of Transmission of Human Immunodeficiency Virus, Hepatitis B Virus, and Other Bloodborne Pathogens in Health-Care Settings," June 24, 1988, **Morbidity and Mortality Weekly Report**, Centers for Disease Control, Public Health Service, U. S. Department of Health and Human Services, Atlanta, Georgia 30333. HHS Publication No. (CDC) 87-8017 and (CDC) 88-8017. Copies may be obtained from South Dakota Department of Health, 615 East 4<sup>th</sup> Street, Pierre, South Dakota 57501. Cost: Free.~~

~~Copies of the three Centers for Disease Control and Prevention publications below may be obtained from the Massachusetts Medical Society Publications, CSPO, Box 9120, Waltham, MA 92254. Cost is \$5 each.~~

1. ~~"Recommendations for Prevention of HIV Transmission in Health-Care Settings." **Morbidity and Mortality Weekly Report** (MMWR) 1987:36 (Supp. No. 2S); #5S-18S; Centers for Disease Control and Prevention, Public Health Service, U.S. Department of Health and Human Services, Atlanta, Georgia 30333.~~

2. ~~"Update: Universal Precautions for Prevention of Transmission of HIV, HBV, and Other Bloodborne Pathogens in Health-Care Settings." MMWR 1988:37; 377-382, 387-8; Centers for Disease Control and Prevention, Public Health Service, U.S. Department of Health and Human Services, Atlanta, Georgia 30333.~~

3. ~~"Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Patients During Exposure-Prone Invasive Procedures." MMWR 1991:40 (No. RR-8); #1-9; Centers for Disease Control and Prevention, Public Health Service, U.S. Department of Health and Human Services, Atlanta, Georgia 30333.~~

**Cross Reference:** Fire safety standards, § 20:45:05:15.

**20:45:05:11. Refrigeration requirements.** A crematory ~~authority operator which who~~ is unable to cremate unembalmed human remains immediately upon taking custody of the human remains must provide or maintain an operable refrigeration unit with cleanable, noncorrosive interior and exterior finishes. The unit must be capable of maintaining a temperature of ~~34~~ forty degrees Fahrenheit or below ~~and of holding at least three bodies~~. Human remains that are not embalmed may not be held by the crematory authority for longer than ~~72 hours~~ six days before cremation, except in the event of a coroner's investigation or inquest, or when otherwise ordered by a court of competent jurisdiction. For purposes of this section, the phrase, immediately upon taking custody, means within ~~24~~ twenty-four hours of taking custody.

**Source:** 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:11, 26 SDR 87, effective December 9, 1999; 30 SDR 215, effective July 14, 2004.

**General Authority:** SDCL 34-26A-33.

**Law Implemented:** SDCL 34-26A-4.1(4), 34-26A-33.

**20:45:05:12. Embalming requirements.** ~~In addition to the requirements of § 20:45:05:10, a crematory authority which embalms human remains must provide for a person licensed by the state Board of Funeral Service to perform the embalming in a facility licensed by the state Board of Funeral Service~~ Repealed.

**Source:** 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:12, 26 SDR 87, effective December 9, 1999.

**General Authority:** SDCL 34-26A-33.

**Law Implemented:** SDCL ~~34-26A-16, 34-26A-33~~.

**Cross References:** ~~License required to embalm, practice funeral service or maintain establishment, SDCL 36-19-14; Individual and small onsite wastewater systems, ch 74:53:01.~~

**20:45:05:13. Construction standards.** ~~A crematory authority must shall ensure the meet at least the following crematory construction standards:~~

~~(1) Provide a cremation chamber which is designed and fabricated expressly for the purpose of cremating human remains;~~

~~(2) Install windows and doors in such a way that rooms for preparation, holding, or cremation of human remains are obstructed from view from the outside and that fumes and odors are prevented from entering other parts of the crematory premises; and~~

~~(3) Control cremation chamber emissions in accordance with the rules of the Department of Agriculture and Natural Resources~~ Repealed.

**Source:** 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:13, 26 SDR 87, effective December 9, 1999; SL 2021, ch 1, §§ 8, 19, effective April 19, 2021.

**General Authority:** ~~SDCL 34-26A-33.~~

**Law Implemented:** ~~SDCL 34-26A-3, 34-26A-33.~~

**Cross Reference:**

~~Emission restrictions for incinerators, § 74:36:06:04.~~

**20:45:05:14. Notice of construction or alteration of crematories.** ~~The board must be notified at least 30 days prior to initiating construction of new crematories or permanent additions, alterations, or modification of existing crematories. A crematory must be constructed so as to comply with SDCL chapter 34-26A as well as conform to all local building codes and environmental standards~~ Repealed.

**Source:** 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:14, 26 SDR 87, effective December 9, 1999; 30 SDR 215, effective July 14, 2004.

**General Authority:** ~~SDCL 34-26A-33.~~

**Law Implemented:** ~~SDCL 34-26A-33.~~

~~Cross-Reference: Operating permit or permit revision required, § 74:36:04:02.~~

**20:45:05:15. Fire safety standards.** A crematory must meet applicable fire safety standards in the ~~1988~~ 2021 NFPA 101, "Life Safety Code," and ~~2019 NFPA-82-1983~~ 82, "Standard on Incinerators, Waste and Linen Handling Systems and Equipment."

**Source:** 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:15, 26 SDR 87, effective December 9, 1999.

**General Authority:** SDCL 34-26A-33.

**Law Implemented:** ~~SDCL 34-26A-3~~, 34-26A-33.

**References:**

NFPA 101, "~~Life Safety Code-1988~~ 2021," National Fire Protection Association. Copies may be obtained from the National Fire Protection Association, ~~Batterymarch Park, Quincy, MA 02269~~ <https://catalog.nfpa.org>. Cost: ~~\$46.75~~ \$151.50.

NFPA ~~82-1983~~ 82, "**Standard on Incinerators, Waste and Linen Handling Systems and Equipment**," National Fire Protection Association. Copies may be obtained from the National Fire Protection Association, ~~Batterymarch Park, Quincy, MA 02269~~ <https://catalog.nfpa.org>. Cost: ~~\$19.50~~ \$70.00.

**20:45:05:16. Fire safety requirements for crematories attached to funeral establishments.** A crematory which is a part of a funeral establishment or is physically attached to a funeral establishment must be separated from the funeral establishment by construction using noncombustible materials with a fire resistance rating of no less than two hours. As an alternative to a two-hour fire separation, an automatic sprinkler system may be installed in the funeral establishment and a one-hour fire separation constructed between the funeral establishment and the crematory.

**Source:** 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:16, 26 SDR 87, effective December 9, 1999.

**General Authority:** SDCL 34-26A-33.

**Law Implemented:** SDCL ~~34-26A-3~~, 34-26A-33.