

Article 13A.

Practice of Funeral Service.

§ 90-210.18: Repealed by Session Laws 2004-192, s. 1, effective January 1, 2005.

§ 90-210.18A. Board of Funeral Service created; qualifications; vacancies; removal.

(a) The General Assembly declares that the practice of funeral service affects the public health, safety, and welfare and is subject to regulation and control in the public interest. The public interest requires that only qualified persons be permitted to practice funeral service in North Carolina and that the profession merit the confidence of the public. This Article shall be liberally construed to accomplish these ends.

(b) The North Carolina Board of Funeral Service is created and shall regulate the practice of funeral service in this State. The Board shall have nine members as follows:

- (1) Four members appointed by the Governor from nominees recommended by the North Carolina Funeral Directors Association, Inc. These members shall be persons licensed under this Article.
- (2) Two members appointed by the Governor from nominees recommended by the Funeral Directors & Morticians Association of North Carolina, Inc. These members shall be persons licensed under this Article.
- (3) One member appointed by the Governor who is licensed under this Article and who is not affiliated with any funeral service trade association.
- (4) One member appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate. This member shall be a person who is not licensed under this Article or employed by a person who is licensed under this Article.
- (5) One member appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives. This member shall be a person who is not licensed under this Article or employed by a person who is licensed under this Article.

Members of the Board shall serve staggered three-year terms, ending on December 31 of the last year of the term or when a successor has been duly appointed, whichever is later. No member may serve more than two complete consecutive terms.

(c) Vacancies. – A vacancy shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(d) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved. (2004-192, s. 2; 2007-531, s. 1.)

§ 90-210.19. Board members' oath of office.

The members of said Board, before entering upon their duties, shall take and subscribe to the oath of office prescribed for other State officers, which said oath shall be administered by a person qualified to administer such oath and shall be filed in the office of the Secretary of State.

(1901, c. 338, ss. 3, 4; Rev., s. 4385; C.S., s. 6778; 1945, c. 98, s. 2; 1949, c. 951, s. 2; 1957, c. 1240, s. 2; 1969, c. 584, s. 1; 1973, c. 476, s. 128; 1975, c. 571.)

§ 90-210.20. Definitions.

(a) "Advertisement" means the publication, dissemination, circulation or placing before the public, or causing directly or indirectly to be made, published, disseminated or placed before the public, any announcement or statement in a newspaper, magazine, or other publication, or in the form of a book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label or tag, or over any radio, television station, or electronic medium.

(b) "Board" means the North Carolina Board of Funeral Service.

(c) "Burial" includes interment in any form, cremation and the transportation of the dead human body as necessary therefor.

(c1) "Chapel" means a chapel or other facility separate from the funeral establishment premises for the primary purpose of reposing of dead human bodies, visitation or funeral ceremony that is owned, operated, or maintained by a funeral establishment under this Article, and that does not use the word "funeral" in its name, on a sign, in a directory, in advertising or in any other manner; in which or on the premises of which there is not displayed any caskets or other funeral merchandise; in which or on the premises of which there is not located any preparation room; and which no owner, operator, employee, or agent thereof represents the chapel to be a funeral establishment.

(c2) "Dead human bodies", as used in this Article includes fetuses beyond the second trimester and the ashes from cremated bodies.

(d) "Embalmer" means any person engaged in the practice of embalming.

(e) "Embalming" means the preservation and disinfection or attempted preservation and disinfection of dead human bodies by application of chemicals externally or internally or both and the practice of restorative art including the restoration or attempted restoration of the appearance of a dead human body. Embalming shall not include the washing or use of soap and water to cleanse or prepare a dead human body for disposition by the authorized agents, family, or friends of the deceased who do so privately without pay or as part of the ritual washing and preparation of dead human bodies prescribed by religious practices; provided, that no dead human body shall be handled in a manner inconsistent with G.S. 130A-395.

(f) "Funeral directing" means engaging in the practice of funeral service except embalming.

(g) "Funeral director" means any person engaged in the practice of funeral directing.

(h) "Funeral establishment" means every place or premises devoted to or used in the care, arrangement and preparation for the funeral and final disposition of dead human bodies and maintained for the convenience of the public in connection with dead human bodies or as the place for carrying on the practice of funeral service.

(i) "Funeral service licensee" means a person who is duly licensed and engaged in the practice of funeral service.

(j) "Funeral service" means the aggregate of all funeral service licensees and their duties and responsibilities in connection with the funeral as an organized, purposeful, time-limited, flexible, group-centered response to death.

(k) "Practice of funeral service" means engaging in the care or disposition of dead human bodies or in the practice of disinfecting and preparing by embalming or otherwise dead human bodies for the funeral service, transportation, burial or cremation, or in the practice of funeral

directing or embalming as presently known, whether under these titles or designations or otherwise. "Practice of funeral service" also means engaging in making arrangements for funeral service, selling funeral supplies to the public or making financial arrangements for the rendering of such services or the sale of such supplies.

(l) "Resident trainee" means a person who is engaged in preparing to become licensed for the practice of funeral directing, embalming or funeral service under the personal supervision and instruction of a person duly licensed for the practice of funeral directing, embalming or funeral service in the State of North Carolina under the provisions of this Chapter, and who is duly registered as a resident trainee with the Board. (1957, c. 1240, s. 2; 1975, c. 571; 1979, c. 461, s. 6; 1987, c. 430, s. 2; c. 879, s. 6.2; 1997-399, s. 1; 2001-294, s. 2; 2003-420, ss. 1, 3; 2007-531, s. 2.)

§ 90-210.21. Repealed by Session Laws 1987, c. 430, s. 3.

§ 90-210.22. Required meetings of the Board.

The Board shall hold at least four meetings in each year. In addition, the Board may meet as often as the proper and efficient discharge of its duties shall require. Five members shall constitute a quorum. (1901, c. 338, ss. 5, 6, 7, 8; Rev., s. 4387; C.S., s. 6780; 1949, c. 951, s. 3; 1957, c. 1240, s. 2; 1969, c. 584, s. 2; 1973, c. 476, s. 128; 1975, c. 571; 1991 (Reg. Sess., 1992), c. 901, s. 4; 2003-420, s. 4.)

§ 90-210.23. Powers and duties of the Board.

(a) The Board is authorized to adopt and promulgate such rules and regulations for transaction of its business and for the carrying out and enforcement of the provisions of this Article as may be necessary and as are consistent with the laws of this State and of the United States.

(b) The Board shall elect from its members a president, a vice-president and a secretary, no two offices to be held by the same person. The president and vice-president and secretary shall serve for one year and until their successors shall be elected and qualified. The Board shall have authority to engage adequate staff as deemed necessary to perform its duties.

(c) The members of the Board shall serve without compensation provided that such members shall be reimbursed for their necessary traveling expenses and the necessary expenses incident to their attendance upon the business of the Board, and in addition thereto they shall receive per diem and expense reimbursement as provided in G.S. 93B-5 for every day actually spent by such member upon the business of the Board. All expenses, salaries and per diem provided for in this Article shall be paid from funds received under the provisions of this Article and shall in no manner be an expense to the State.

(d) Every person licensed by the Board and every resident trainee shall furnish all information required by the Board reasonably relevant to the practice of the profession or business for which the person is a licensee or resident trainee. Every funeral service establishment and its records and every place of business where the practice of funeral service or embalming is carried on and its records shall be subject to inspection by the Board during normal hours of operation and periods shortly before or after normal hours of operation and shall furnish all information required by the Board reasonably relevant to the business therein conducted. Every licensee, resident trainee, embalming facility, and funeral service establishment shall provide the Board with a current post-office address which shall be placed on the appropriate

register and all notices required by law or by any rule or regulation of the Board to be mailed to any licensee, resident trainee, embalming facility, or funeral service establishment shall be validly given when mailed to the address so provided.

(d1) The Board is empowered to hold hearings in accordance with the provisions of this Article and of Chapter 150B to subpoena witnesses and to administer oaths to or receive the affirmation of witnesses before the Board.

In any show cause hearing before the Board held under the authority of Chapter 150B of the General Statutes where the Board imposes discipline against a licensee, the Board may recover the costs, other than attorneys' fees, of holding the hearing against all respondents jointly, not to exceed two thousand five hundred dollars (\$2,500).

(e) The Board is empowered to regulate and inspect, according to law, funeral service establishments and embalming facilities, their operation, and the licenses under which they are operated, and to enforce as provided by law the rules, regulations, and requirements of the Division of Health Services and of the city, town, or county in which the funeral service establishment or embalming facility is maintained and operated. Any funeral establishment or embalming facility that, upon inspection, is found not to meet all of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain that the deficiency or other violation has been corrected. The Board is also empowered to enforce compliance with the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

(f) The Board may establish, supervise, regulate and control programs for the resident trainee. It may approve schools of mortuary science or funeral service, graduation from which is required by this Article as a qualification for the granting of any license, and may establish essential requirements and standards for such approval of mortuary science or funeral service schools.

(g) Schools for teaching mortuary science which are approved by the Board shall have extended to them the same privileges as to the use of bodies for dissecting while teaching as those granted in this State to medical colleges, but such bodies shall be obtained through the same agencies which provide bodies for medical colleges.

(h) The Board shall adopt a common seal.

(h1) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

(h2) The Board may employ legal counsel and clerical and technical assistance, and fix the compensation therefor, and incur such other expenses as may be deemed necessary in the performance of its duties and the enforcement of the provisions of this Article or as otherwise required by law and as may be necessary to carry out the powers herein conferred.

(i) The Board may perform such other acts and exercise such other powers and duties as may be provided elsewhere in this Article or otherwise by law and as may be necessary to carry out the powers herein conferred. (1901, c. 338, ss. 5, 6, 7, 8, 11; Rev., ss. 4386, 4387, 4389; C.S., ss. 6779, 6780, 6783; 1949, c. 951, s. 3; 1957, c. 1240, s. 2; 1969, c. 584, s. 2; 1973, c. 476, s. 128; 1975, c. 571; 1979, c. 461, ss. 8, 9; 1987, c. 827, s. 1; 1991, c. 528, s. 3; 1993, c. 164, s. 1; 1997-399, ss. 2, 3; 2003-420, s. 5(a), (b); 2007-531, s. 3.)

§ 90-210.24. Inspector.

(a) The Board may appoint one or more agents who shall serve at the pleasure of the Board and who shall have the title "Inspector of the North Carolina Board of Funeral Service." No person is eligible for appointment as inspector unless at the time of the appointment the person is licensed under this Article as a funeral service licensee.

(b) To determine compliance with the provisions of this Article and regulations promulgated under this Article, inspectors may

- (1) Enter the office, establishment or place of business of any funeral service licensee, funeral director or embalmer in North Carolina, and any office, establishment or place in North Carolina where the practice of funeral service or embalming is carried on, or where that practice is advertised as being carried on, or where a funeral is being conducted or a body is being embalmed, to inspect the records, office, establishment, or facility, or to inspect the practice being carried on or license or registration of any licensee and any resident trainee operating therein;
- (2) Enter any hospital, nursing home, or other institution from which a dead human body has been removed by any person licensed under this Article or their designated representative to inspect records pertaining to the removal and its authorization; and
- (3) May inspect criminal and probation records of licensees and applicants for licenses under this Article to obtain evidence of their character.

Inspectors may serve papers and subpoenas issued by the Board or any office or member thereof under authority of this Article, and shall perform other duties prescribed or ordered by the Board.

(c) Upon request by the Board, the Attorney General of North Carolina shall provide the inspectors with appropriate identification cards, signed by the Attorney General or his designated agent.

(d) The Board may prescribe an inspection form to be used by the inspectors in performing their duties. (1975, c. 571; 1979, c. 461, s. 10; 1993, c. 164, s. 2; 1997-399, s. 4; 2003-420, ss. 1, 6.)

§ 90-210.25. Licensing.

(a) Qualifications, Examinations, Resident Traineeship and Licensure. –

- (1) To be licensed for the practice of funeral directing under this Article, a person must:
 - a. Be at least 18 years of age.
 - b. Be of good moral character.
 - c. Be a graduate of a Funeral Director Program at a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction, including the subjects set out in sub-part e.1. of this subdivision, as prescribed by a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education.
 - d. Have completed 12 months of resident traineeship as a funeral director, pursuant to the procedures and conditions set out in G.S.

90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.

- e. Have passed an oral or written funeral director examination on the following subjects:
 - 1. Psychology, sociology, pathology, funeral directing, business law, funeral law, funeral management, and accounting.
 - 2. Repealed by Session Laws 1997-399, s. 5.
 - 3. Laws of North Carolina and rules of the Board and other agencies dealing with the care, transportation and disposition of dead human bodies.
- (2) To be licensed for the practice of embalming under this Article, a person must:
- a. Be at least 18 years of age.
 - b. Be of good moral character.
 - c. Be a graduate of a mortuary science college approved by the Board.
 - d. Have completed 12 months of resident traineeship as an embalmer pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.
 - e. Have passed an oral or written embalmer examination on the following subjects:
 - 1. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.
 - 2. Repealed by Session Laws 1997-399, s. 6.
 - 3. Laws of North Carolina and rules of the Board and other agencies dealing with the care, transportation and disposition of dead human bodies.
- (3) To be licensed for the practice of funeral service under this Article, a person must:
- a. Be at least 18 years of age.
 - b. Be of good moral character.
 - c. Be a graduate of and receive an associate degree from a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education. Have completed a minimum of 60 semester hours or 90 quarter hours of instruction, including the subjects set out in sub-part e.1. of this subdivision, as prescribed by a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education.
 - d. Have completed 12 months of resident traineeship as a funeral service licensee, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.
 - e. Have passed an oral or written funeral service examination on the following subjects:

1. Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.
 2. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.
 3. Repealed by Session Laws 1997-399, s. 7.
 4. Laws of North Carolina and rules of the Board and other agencies dealing with the care, transportation and disposition of dead human bodies.
- (4) a. A person desiring to become a resident trainee shall apply to the Board on a form provided by the Board. The application shall state that the applicant is not less than 18 years of age, of good moral character, and is the graduate of a high school or the equivalent thereof, and shall indicate the licensee under whom the applicant expects to train. A person training to become an embalmer may serve under either a licensed embalmer or a funeral service licensee. A person training to become a funeral director may serve under either a licensed funeral director or a funeral service licensee. A person training to become a funeral service licensee shall serve under a funeral service licensee. The application must be sustained by oath of the applicant and be accompanied by the appropriate fee. When the Board is satisfied as to the qualifications of an applicant it shall instruct the secretary to issue a certificate of resident traineeship.
- b. Within 30 days of a resident trainee leaving the proctorship of the licensee under whom the trainee has worked, the licensee shall file with the Board an affidavit showing the length of time served with the licensee by the trainee, and the affidavit shall be made a matter of record in the Board's office. The licensee shall deliver a copy of the affidavit to the trainee.
- c. A person who has not completed the traineeship and wishes to do so under a licensee other than the one whose name appears on the original certificate may reapply to the Board for approval.
- d. A certificate of resident traineeship shall be signed by the resident trainee and upon payment of the renewal fee shall be renewable one year after the date of original registration; but the certificate may not be renewed more than two times. The Board shall mail to each registered trainee at his last known address a notice that the renewal fee is due and that, if not paid within 30 days of the notice, the certificate will be canceled. A late fee, in addition to the renewal fee, shall be charged for a late renewal, but the renewal of the registration of any resident trainee who is engaged in active service in the Armed Forces of the United States at the time renewal is due may, at the discretion of the Board, be held in abeyance for the duration of that service without penalties. No credit shall be allowed for the 12-month period of resident traineeship that shall have been completed more than five years preceding the examination for a license.

- e. All registered resident trainees shall report to the Board at least once every month during traineeship upon forms provided by the Board listing the work which has been completed during the preceding month of resident traineeship. The data contained in the reports shall be certified as correct by the licensee under whom the trainee has served during the period and by the licensed person who is managing the funeral service establishment. Each report shall list the following:
 - 1. For funeral director trainees, the conduct of any funerals during the relevant time period,
 - 2. For embalming trainees, the embalming of any bodies during the relevant time period,
 - 3. For funeral service trainees, both of the activities named in 1 and 2 of this subsection, engaged in during the relevant time period.
 - f. To meet the resident traineeship requirements of G.S. 90-210.25(a)(1), G.S. 90-210.25(a)(2) and G.S. 90-210.25(a)(3) the following must be shown by the affidavit(s) of the licensee(s) under whom the trainee worked:
 - 1. That the funeral director trainee has, under supervision, assisted in directing at least 25 funerals during the resident traineeship,
 - 2. That the embalmer trainee has, under supervision, assisted in embalming at least 25 bodies during the resident traineeship,
 - 3. That the funeral service trainee has, under supervision, assisted in directing at least 25 funerals and, under supervision, assisted in embalming at least 25 bodies during the resident traineeship.
 - g. The Board may suspend or revoke a certificate of resident traineeship for violation of any provision of this Article.
 - h. Each sponsor for a registered resident trainee must during the period of sponsorship be actively employed with a funeral establishment. The traineeship shall be a primary vocation of the trainee.
 - i. Only one resident trainee may register and serve at any one time under any one person licensed under this Article.
 - j., k. Repealed by Session Laws 1991, c. 528, s. 4.
 - l. The Board shall register no more than one resident trainee at a funeral establishment that served 100 or fewer families during the 12 months immediately preceding the date of the application, and shall register no more than one resident trainee for each additional 100 families served at the funeral establishment during the 12 months immediately preceding the date of the application.
- (5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.
- a. All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates

thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

- b. The holder of any license issued by the Board who shall fail to renew the same on or before February 1 of the calendar year for which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which the applicant's North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an applicant for a forfeiture which occurred during the applicant's service in the Armed Forces of the United States provided the applicant applies within six months following severance therefrom.
- c. All licensees now or hereafter licensed in North Carolina shall take continuing education courses in subjects relating to the practice of the profession for which they are licensed, to the end that the benefits of learning and reviewing skills will be utilized and applied to assure proper service to the public.
- d. As a prerequisite to the annual renewal of a license, the licensee must complete, during the year immediately preceding renewal, at least five hours of continuing education courses, of which the Board may require licensees to take up to two hours specified by the Board. All continuing education courses must be approved by the Board prior to enrollment. A licensee who completes more than five hours in a year may carry over a maximum of five hours as a credit to the following year's requirement. A licensee who is issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year.
- e. The Board shall not renew a license unless fulfillment of the continuing education requirement has been certified to it on a form provided by the Board, but the Board may waive this requirement for renewal in cases of certified illness or undue hardship or where the licensee lives outside of North Carolina and does not practice in North

Carolina, and the Board shall waive the requirement for all licensees who were licensed on or before December 31, 2003, and have been licensed in North Carolina for a continuous period of 25 years or more, for all licensees who are licensed on or after January 1, 2004, who have been licensed for a continuous period of 25 years or more and have attained the age of 60 years, and for all licensees who are, at the time of renewal, members of the General Assembly.

- f. The Board shall cause to be established and offered to the licensees, each calendar year, at least eight hours of continuing education courses. The Board may charge licensees attending these courses a reasonable registration fee in order to meet the expenses thereof and may also meet those expenses from other funds received under the provisions of this Article.
- g. Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee.
- h. The Department of Public Safety may provide a criminal record check to the Board for a person who has applied for a new or renewal license, or certification through the Board. The Board shall provide to the Department of Public Safety, along with the request, the fingerprints of the applicant, any additional information required by the Department of Public Safety, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Public Safety may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision.

(a1) Inactive Licenses. – Any person holding a license issued by the Board for funeral directing, for embalming, or for the practice of funeral service may apply for an inactive license in the same category as the active license held. The inactive license is renewable annually. Continuing education is not required for the renewal of an inactive license. The holder of an inactive license may not engage in any activity requiring an active license. The holder of an inactive license may apply for an active license in the same category, and the Board shall issue an active license if the applicant has completed a total number of hours of accredited continuing education equal to five times the number of years the applicant held the inactive license. No application fee is required for the reinstatement of an active license pursuant to this subsection. The holder of an inactive license who returns to active status shall surrender the inactive license to the Board.

(a2) In order to engage in the practice of funeral directing or funeral service, such a licensee must own, be employed by, or otherwise be an agent of a licensed funeral establishment; except that such a licensee may practice funeral directing or funeral service if:

- (1) Employed by a college of mortuary science; or
- (2) The licensee:
 - a. Maintains all of his or her business records at a location made known to the Board and available for inspection by the Board under the same terms and conditions as the business records of a licensed funeral establishment;
 - b. Complies with rules and regulations imposed on funeral establishments and the funeral profession that are designed to protect consumers, to include, but not be limited to, the Federal Trade Commission's laws and rules requiring General Price Lists and Statements of Goods and Services; and
 - c. Pays to the Board the funeral establishment license fee required by law and set by the Board.

Nothing in this subdivision shall preclude a licensee from arranging cremations and cremating human remains while employed by a crematory.

(b) Persons Licensed under the Laws of Other Jurisdictions. –

- (1) The Board shall grant licenses to funeral directors, embalmers and funeral service licensees, licensed in other states, territories, the District of Columbia, and foreign countries, when it is shown that the applicant holds a valid license as a funeral director, embalmer or funeral service licensee issued by the other jurisdiction, has demonstrated knowledge of the laws and rules governing the profession in North Carolina and has submitted proof of his good moral character; and either that the applicant has continuously practiced the profession in the other jurisdiction for at least three years immediately preceding his application, or the Board has determined that the licensing requirements for the other jurisdiction are substantially similar to those of North Carolina.
- (2) The Board shall periodically review the mortuary science licensing requirements of other jurisdictions and shall determine which licensing requirements are substantially similar to the requirements of North Carolina.
- (3) The Board may issue special permits, to be known as courtesy cards, permitting nonresident funeral directors, embalmers and funeral service

licensees to remove bodies from and to arrange and direct funerals and embalm bodies in this State, but these privileges shall not include the right to establish a place of business in or engage generally in the business of funeral directing and embalming in this State. Except for special permits issued by the Board for teaching continuing education programs and for work in connection with disasters, no special permits may be issued to nonresident funeral directors, embalmers, and funeral service licensees from states that do not issue similar courtesy cards to persons licensed in North Carolina pursuant to this Article.

(c) Registration, Filing and Transportation. –

- (1) The holder of any license granted by this State for those within the funeral service profession or renewal thereof provided for in this Article shall cause registration to be filed in the office of the board of health of the county or city in which he practices his profession, or if there be no board of health in such county or city, at the office of the clerk of the superior court of such county. All such licenses, certificates, duplicates and renewals thereof shall be displayed in a conspicuous place in the funeral establishment where the holder renders service.
- (2) It shall be unlawful for any railway agent, express agency, baggage master, conductor or other person acting as such, to receive the dead body of any person for shipment or transportation by railway or other public conveyance, to a point outside of this State, unless the body is accompanied by a burial-transit permit.
- (3) The "transportation or removal of a dead human body" shall mean the removal of a dead human body for a fee from the location of the place of death or discovery of death or the transportation of the body to or from a medical facility, funeral establishment or facility, crematory or related holding facility, place of final disposition, or place designated by the Medical Examiner for examination or autopsy of the dead human body.
- (4) Any individual, not otherwise exempt from this subsection, shall apply for and receive a permit from the Board before engaging in the transportation or removal of a dead human body in this State. Unless otherwise exempt from this subsection, no corporation or other business entity shall engage in the transportation or removal of a dead human body unless it has in its employ at least one individual who holds a permit issued under this section. No individual permit holder shall engage in the transportation or removal of a dead human body for more than one person, firm, or corporation without first providing the Board with written notification of the name and physical address of each such employer.
- (5) The following persons shall be exempt from the permit requirements of this section but shall otherwise be subject to subdivision (9) of this subsection and any rules relating to the proper handling, care, removal, or transportation of a dead human body:
 - a. Licensees under this Article and their employees.
 - b. Employees of common carriers.

- c. Except as provided in sub-subdivision (6)c. of this section, employees of the State and its agencies and employees of local governments and their agencies.
 - d. Funeral directors licensed in another state and their employees.
- (6) The following persons shall be exempt from this section:
- a. Emergency medical technicians, rescue squad workers, volunteer and paid firemen, and law enforcement officers while acting within the scope of their employment.
 - b. Employees of public or private hospitals, nursing homes, or long-term care facilities, while handling a dead human body within such facility or while acting within the scope of their employment.
 - c. State and county medical examiners and their investigators.
 - d. Any individual transporting cremated remains.
 - e. Any individual transporting or removing a dead human body of their immediate family or next of kin.
 - f. Any individual who has exhibited special care and concern for the decedent.
- (7) Individuals eligible to receive a permit under this section for the transportation or removal of a dead human body for a fee, shall:
- a. Be at least 18 years of age.
 - b. Possess and maintain a valid drivers license issued by this State and provide proof of all liability insurance required for the registration of any vehicle in which the person intends to engage in the business of the removal or transportation of a dead human body.
 - c. Affirmatively state under oath that the person has read and understands the statutes and rules relating to the removal and transportation of dead human bodies and any guidelines as may be adopted by the Board.
 - d. Provide three written character references on a form prescribed by the Board, one of which must be from a licensed funeral director.
 - e. Be of good moral character.
- (8) The permit issued under this section shall expire on December 31 of each year. The application fee for the individual permit shall not exceed one hundred twenty-five dollars (\$125.00). A fee, not to exceed one hundred dollars (\$100.00), in addition to the renewal fee not to exceed seventy-five dollars (\$75.00), shall be charged for any application for renewal received by the Board after February 1 of each year.
- (9) No person shall transport a dead human body in the open cargo area or passenger area of a vehicle or in any vehicle in which the body may be viewed by the public. Any person removing or transporting a dead human body shall either cover the body, place it upon a stretcher designed for the purpose of transporting humans or dead human bodies in a vehicle, and secure such stretcher in the vehicle used for transportation, or shall enclose the body in a casket or container designed for common carrier transportation, and secure the casket or container in the vehicle used for transportation. No person shall fail to treat a dead human body with respect at all times. No person shall take a photograph or video recording of a dead human body without the consent of a

member of the deceased's immediate family or next of kin or other authorizing agent.

- (10) The Board may adopt rules under this section including permit application procedures and the proper procedures for the removal, handling, and transportation of dead human bodies. The Board shall consult with the Office of the Chief Medical Examiner before initiating rule making under this section and before adopting any rules pursuant to this section. Nothing in this section prohibits the Office of the Chief Medical Examiner from adopting policies and procedures regarding the removal, transportation, or handling of a dead human body under the jurisdiction of that office that are more stringent than the laws in this section or any rules adopted under this section. Any violation of this section or rules adopted under this section may be punished by the Board by a suspension or revocation of the permit to transport or remove dead human bodies or by a term of probation. The Board may, in lieu of any disciplinary measure, accept a penalty not to exceed five thousand dollars (\$5,000) per violation.
 - (11) Each applicant for a permit shall provide the Board with the applicant's home address, name and address of any corporation or business entity employing such individual for the removal or transportation of dead human bodies, and the make, year, model, and license plate number of any vehicle in which a dead human body is transported. A permittee shall provide written notification to the Board of any change in the information required to be provided to the Board by this section or by the application for a permit within 30 days after such change takes place.
 - (12) If any person shall engage in or hold himself out as engaging in the business of transportation or removal of a dead human body without first having received a permit under this section, the person shall be guilty of a Class 2 misdemeanor.
 - (13) The Board shall have the authority to inspect any place or premises that the business of removing or transporting a dead human body is carried out and shall also have the right of inspection of any vehicle and equipment used by a permittee for the removal or transportation of a dead human body.
- (d) Establishment Permit. –
- (1) No person, firm or corporation shall conduct, maintain, manage or operate a funeral establishment unless a permit for that establishment has been issued by the Board and is conspicuously displayed in the establishment. Each funeral establishment at a specific location shall be deemed to be a separate entity and shall require a separate permit and compliance with the requirements of this Article.
 - (2) A permit shall be issued when:
 - a. It is shown that the funeral establishment has in charge a person, known as a manager, licensed for the practice of funeral directing or funeral service, who shall not be permitted to manage more than one funeral establishment. The manager shall be charged with overseeing the daily operation of the funeral establishment. If the manager leaves the employment of the funeral establishment and is the only licensee

employed who is eligible to serve as manager, the funeral establishment may operate without a manager for a period not to exceed 30 days so long as: (i) the funeral establishment retains one or more licensees to perform all services requiring a license under this Article; (ii) the licensees are not practicing under the exception authorized by G.S. 90-210.25(a2) and would otherwise be eligible to serve as manager; and (iii) the funeral establishment registers the name of the licensees with the Board.

- b. The Board receives a list of the names of all part-time and full-time licensees employed by the establishment.
 - c. It is shown that the funeral establishment satisfies the requirements of G.S. 90-210.27A.
 - d. The Board receives payment of the permit fee.
- (3) Applications for funeral establishment permits shall be made on forms provided by the Board and filed with the Board by the owner, a partner, a member of the limited liability company, or an officer of the corporation by January 1 of each year, and shall be accompanied by the application fee or renewal fee, as the case may be. All permits shall expire on December 31 of each year. If the renewal application and renewal fee are not received in the Board's office on or before February 1, a late renewal fee, in addition to the regular renewal fee, shall be charged.
- (4) The Board may place on probation, refuse to issue or renew, suspend, or revoke a permit when an owner, partner, manager, member, operator, or officer of the funeral establishment violates any provision of this Article or any regulations of the Board, or when any agent or employee of the funeral establishment, with the consent of any person, firm or corporation operating the funeral establishment, violates any of those provisions, rules or regulations. In any case in which the Board is entitled to place a funeral establishment permittee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars (\$5,000) in conjunction with the probation. In any case in which the Board is entitled to suspend, revoke, or refuse to renew a permit, the Board may accept from the funeral establishment permittee an offer to pay a penalty of not more than five thousand dollars (\$5,000). The Board may either accept a penalty or revoke or refuse to renew a license, but not both. Any penalty under this subdivision may be in addition to any penalty assessed against one or more licensed individuals employed by the funeral establishment.
- (5) Funeral establishment permits are not transferable. A new application for a permit shall be made to the Board within 30 days of a change of ownership of a funeral establishment.

(d1) Embalming Outside Establishment. – An embalmer who engages in embalming in a facility other than a funeral establishment or in the residence of the deceased person shall, no later than January 1 of each year, register the facility with the Board on forms provided by the Board.

(e) Revocation; Suspension; Compromise; Disclosure. –

- (1) Whenever the Board finds that an applicant for a license or a person to whom a license has been issued by the Board is guilty of any of the following acts or omissions and the Board also finds that the person has thereby become unfit to practice, the Board may suspend or revoke the license or refuse to issue or renew the license, in accordance with the procedures set out in Chapter 150B of the General Statutes:
- a. Conviction of a felony or a crime involving fraud or moral turpitude.
 - a1. Denial, suspension, or revocation of an occupational or business license by another jurisdiction.
 - b. Fraud or misrepresentation in obtaining or renewing a license or in the practice of funeral service.
 - c. False or misleading advertising as the holder of a license.
 - d. Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this paragraph shall not be construed to prohibit general advertising by the licensee.
 - e. Employment directly or indirectly of any resident trainee agent, assistant or other person, on a part-time or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular licensee.
 - f. The payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing business except as authorized by Article 13D of this Chapter.
 - g. Gross immorality, including being under the influence of alcohol or drugs while practicing funeral service.
 - h. Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material published or caused to be published by the licensee.
 - i. Failing to treat a dead human body with respect at all times.
 - j. Violating or cooperating with others to violate any of the provisions of this Article or Articles 13D, 13E, or 13F of Chapter 90 of the General Statutes, any rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.
 - k. Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies.
 - l. Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully entitled to the custody thereof.
 - m. Knowingly making any false statement on a certificate of death or violating or cooperating with others to violate any provision of Article 4 or 16 of Chapter 130A of the General Statutes or any rules or regulations promulgated under those Articles as amended from time to time.

- n. Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is entitled to suspend, revoke or refuse to renew a license, the Board may accept from the licensee an offer to pay a penalty of not more than five thousand dollars (\$5,000). The Board may either accept a penalty or revoke or refuse to renew a license, but not both.

- (2) Where the Board finds that a licensee is guilty of one or more of the acts or omissions listed in subdivision (e)(1) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter 150B of the General Statutes. In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars (\$5,000) in conjunction with the probation. The Board may also require satisfactory completion of remedial or educational training as a prerequisite to license reinstatement or for completing the term of probation.

No person licensed under this Article shall remove or cause to be embalmed a dead human body when he or she has information indicating crime or violence of any sort in connection with the cause of death, nor shall a dead human body be cremated, until permission of the State or county medical examiner has first been obtained. However, nothing in this Article shall be construed to alter the duties and authority now vested in the office of the coroner.

No funeral service establishment shall accept a dead human body from any public officer (excluding the State or county medical examiner or his agent), or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the persons who have the legal authority to direct the disposition of the decedent's body. If any persons are found, their authority and directions shall govern the disposal of the remains of the decedent. Any funeral service establishment receiving the remains in violation of this subsection shall make no charge for any service in connection with the remains prior to delivery of the remains as stipulated by the persons having legal authority to direct the disposition of the body. This section shall not prevent any funeral service establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death, and rendering necessary professional services required until the persons having legal authority to direct the disposition of the body have been notified.

When and where a licensee presents a selection of funeral merchandise to the public to be used in connection with the service to be provided by the licensee or an establishment as licensed under this Article, a card or brochure shall be directly associated with each item of merchandise setting forth the price of the service using said merchandise and listing the services and other merchandise included in the price, if any. When there are separate prices for the merchandise and services, such cards or brochures shall indicate the price of the merchandise and of the items separately priced.

At the time funeral arrangements are made and prior to the time of rendering the service and providing the merchandise, a funeral director or funeral service licensee shall give or cause to be given to the person or persons making such arrangements a written statement duly signed by a licensee of said funeral establishment showing the price of the service as selected and what

services are included therein, the price of each of the supplemental items of services or merchandise requested, and the amounts involved for each of the items for which the funeral establishment will advance moneys as an accommodation to the person making arrangements, insofar as any of the above items can be specified at that time. If fees charged by a finance company for expediting payment of life insurance proceeds to the establishment will be passed on to the person or persons responsible for payment of the funeral expenses, information regarding the fees, including the total dollar amount of the fee, shall be disclosed in writing. The statement shall have printed, typed or stamped on the face thereof: "This statement of disclosure is provided under the requirements of North Carolina G.S. 90-210.25(e)." The Board may prescribe other disclosures that a licensee shall give to consumers upon finding that the disclosure is necessary to protect public health, safety, and welfare.

(e1) The taking or recovery of human tissue at a funeral establishment by any person is prohibited. The prohibition does not apply to any of the following:

- (1) A licensee under this Article that performs embalming or otherwise prepares a dead human body in the ordinary course of business.
- (2) The Chief Medical Examiner or anyone acting under the Chief Medical Examiner's authority.
- (3) An autopsy technician who takes or recovers tissue from a dead human body if all of the following apply:
 - a. The taking or recovery is the subject of an academic research program.
 - b. The academic research program has appropriate Institutional Review Board supervision.
 - c. The academic research program has obtained informed consent of the donor or the person legally authorized to provide consent.

No funeral establishment or person licensed under this Article shall permit the taking or recovery of human tissue from a dead human body in its custody or control for human transplantation purposes or for research purposes, except that a funeral establishment or person licensed under this Article may permit an autopsy technician to take or recover tissue at a funeral establishment pursuant to subdivision (3) of this subsection. No funeral establishment or any of its licensees, agents, or employees shall accept, solicit, or offer to accept any payment, gratuity, commission, or compensation of any kind for referring potential tissue donors to a tissue bank or tissue broker or to an eye bank or eye broker. For purposes of this subsection, the term "tissue" does not include an eye.

(f) Unlawful Practices. – If any person shall practice or hold himself or herself out as practicing the profession or art of embalming, funeral directing or practice of funeral service or operating a funeral establishment without having complied with the provisions of this Article, the person shall be guilty of a Class 2 misdemeanor.

(g) Whenever it shall appear to the Board that any person, firm or corporation has violated, threatens to violate or is violating any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain these practices. If upon application the court finds that any provision of this Article is being violated, or a violation is threatened, the court shall issue an order restraining and enjoining the violations, and this relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this subsection. The venue for actions brought under this subsection shall be the superior court of any county in which the acts are alleged to have been committed or in the county where the defendant in the action resides. (1901, c. 338, ss. 9, 10, 14; Rev., ss. 3644, 4388; 1917, c. 36;

1919, c. 88; C.S., ss. 6781, 6782; 1949, c. 951, s. 4; 1951, c. 413; 1957, c. 1240, ss. 2, 21/2; 1965, cc. 719, 720; 1967, c. 691, s. 48; c. 1154, s. 2; 1969, c. 584, ss. 3, 3a, 4; 1975, c. 571; 1979, c. 461, ss. 11-21; 1981, c. 619, ss. 1-4; 1983, c. 69, s. 5; 1985, c. 242; 1987, c. 430, ss. 4-11; c. 827, s. 1; c. 879, s. 6.2; 1991, c. 528, ss. 4, 5; 1993, c. 539, s. 638; 1994, Ex. Sess., c. 24, s. 14(c); 1997-399, ss. 5-13; 2001-294, s. 3; 2002-147, s. 9; 2003-420, ss. 1, 7; 2007-297, s. 1; 2007-531, s. 4; 2011-183, s. 63; 2014-100, s. 17.1(o).)

§ 90-210.25A: Recodified as G.S. 65-77 by Session Laws 2003-420, s. 8(b), effective October 1, 2003.

§ 90-210.25B. Persons who shall not be licensed under this Article.

(a) The board shall not issue or renew any licensure, permit, or registration to any person or entity who has been convicted of a sexual offense against a minor.

(b) For purposes of this Article, the term "sexual offense against a minor" means a conviction of any of the following offenses: G.S. 14-27.23 (statutory rape of a child by an adult), G.S. 14-27.25(a) (statutory rape of a person who is 15 years of age or younger and where the defendant is at least six years older), 14-27.28 (statutory sexual offense with a child by an adult), G.S. 14-27.30 (statutory sexual offense with a person who is 15 years of age or younger and where the defendant is at least six years older), G.S. 14-190.16 (first-degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term shall also include a conviction of the following: any attempt, solicitation, or conspiracy to commit any of these offenses or any aiding and abetting any of these offenses. The term shall also include a conviction in another jurisdiction for an offense which if committed in this State has the same or substantially similar elements to an offense against a minor as defined by this section.

(c) If a person or entity holding a license, permit, or registration in another jurisdiction has the license revoked, suspended, or placed on probation because of a felony conviction other than those enumerated above, the board shall impose a sanction equal to or greater than to the sanction imposed by the other jurisdiction.

(d) If a person or entity holding a license, permit, or registration in another jurisdiction has the license revoked, suspended, or placed on probation because of conduct related to fitness to practice as described in G.S. 90-210.25(e), the board shall impose a sanction equal to or greater than the sanction imposed by the other jurisdiction. (2012-194, s. 71; 2015-62, s. 1(c); 2015-181, ss. 45, 47.)

§ 90-210.25C. Notification forms for deceased voters.

(a) At the time funeral arrangements are made, a funeral director or funeral service licensee is encouraged to make available to near relatives of the deceased a form upon which the near relative may report the status of the deceased voter to the board of elections of the county in which the deceased was a registered voter.

(b) A funeral director or funeral service licensee may obtain forms for reporting the status of deceased voters from the county board of elections. (2013-381, s. 39.2.)

§ 90-210.26. Good moral character.

Evidence of good moral character may be shown by the affidavits of three persons who have been acquainted with the applicant for three years immediately preceding the submission of the affidavit. (1979, c. 461, s. 22.)

§ 90-210.27. Repealed by Session Laws 1987, c. 430, s. 12.

§ 90-210.27A. Funeral establishments.

(a) Every funeral establishment shall contain a preparation room which is strictly private, of suitable size for the embalming of dead bodies. Each preparation room shall:

- (1) Contain one standard type operating table.
- (2) Contain facilities for adequate drainage.
- (3) Contain a sanitary waste receptacle.
- (4) Contain an instrument sterilizer.
- (5) Have wall-to-wall floor covering of tile, concrete, or other material which can be easily cleaned.
- (6) Be kept in sanitary condition and subject to inspection by the Board or its agents at all times.
- (7) Have a placard or sign on the door indicating that the preparation room is private.
- (8) Have a proper ventilation or purification system to maintain a nonhazardous level of airborne contamination.

(b) No one is allowed in the preparation room while a dead human body is being prepared except licensees, resident trainees, public officials in the discharge of their duties, members of the medical profession, officials of the funeral home, next of kin, or other legally authorized persons.

(c) Every funeral establishment shall contain a reposing room for dead human bodies, of suitable size to accommodate a casket and visitors.

(d) Repealed by Session Laws 1997-399, s. 14.

(e) If a funeral establishment is solely owned by a natural person, that person must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a partnership, at least one partner must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a corporation, the president, vice-president, or the chairman of the board of directors must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a limited liability company, at least one member must be licensed by the Board as a funeral director or a funeral service licensee. The licensee required by this subsection must be actively engaged in the operation of the funeral establishment.

(f) If a funeral establishment uses the name of a living person in the name under which it does business, that person must be licensed by the Board as a funeral director or a funeral service licensee.

(g) No funeral establishment shall own, operate, or maintain a chapel without first having registered the name, location, and ownership thereof with the Board; own or maintain more than two chapels, or own or maintain a chapel outside of a radius of 50 miles from the funeral

establishment. A duly licensed person may use a chapel for making arrangements for funeral services, selling funeral merchandise to the public by photograph, video, or computer based presentation, or making financial arrangements for the rendering of the service or sale of supplies, provided that the uses are secondary and incidental to and do not interfere with the reposing of dead human bodies, visitation, or funeral ceremony.

(h) All public health laws and rules apply to funeral establishments. In addition, all funeral establishments must comply with all of the standards established by the rules adopted by the Board.

(i) No funeral establishment shall use an unregistered or misleading name. Misleading names include, but are not limited to, names in the plural form when there is only one funeral establishment, the use of names of deceased individuals, unless the establishment is licensed using the name at the time the new application is made, the use of names of individuals not associated with the establishment, and the use of the word "crematory" or "crematorium" in the name of a funeral establishment that does not own a crematory. If an owner of a funeral establishment owns more than one funeral establishment, the owner may not use the word "crematory" or "crematorium" in the name of more than one of its funeral establishments; except that each funeral home having a crematory on the premises may contain the term "crematory" or "crematorium" in its name.

(j) A funeral establishment will not use any name other than the name by which it is properly registered with the Board. (1987, c. 430, s. 13; c. 879, s. 6.2; 1997-399, s. 14; 2001-294, s. 4; 2003-420, s. 9(a), (b); 2007-531, s. 5.)

§ 90-210.28. Fees.

The Board may set and collect fees, not to exceed the following amounts:

| | |
|---|----------|
| Establishment permit | |
| Application | \$400.00 |
| Annual renewal | 250.00 |
| Late renewal | 150.00 |
| Establishment and embalming facility reinspection fee | 100.00 |
| Courtesy card | |
| Application | 100.00 |
| Annual renewal | 75.00 |
| Out-of-state licensee | |
| Application | 250.00 |
| Embalmer, funeral director, funeral service | |
| Application-North | |
| Carolina-Resident | 200.00 |
| -Non-Resident | 250.00 |
| Annual Renewal-embalmer or | |
| funeral director | 75.00 |
| Total fee, embalmer and funeral director | |
| when both are held by the same person | 100.00 |
| -funeral service | 100.00 |
| Inactive Status | 50.00 |
| Reinstatement fee | 50.00 |
| Resident trainee permit | |

| | |
|--------------------------------------|--------|
| Application | 50.00 |
| Voluntary change in supervisor | 50.00 |
| Annual renewal | 35.00 |
| Late renewal | 25.00 |
| Duplicate license certificate | 25.00 |
| Chapel registration | |
| Application | 150.00 |
| Annual renewal | 100.00 |
| Late renewal | 75.00 |

The Board shall provide, without charge, one copy of the current statutes and regulations relating to Funeral Service to every person applying for and paying the appropriate fees for licensing pursuant to this Article. The Board may charge all others requesting copies of the current statutes and regulations, and the licensees or applicants requesting additional copies, a fee equal to the costs of production and distribution of the requested documents. (1979, c. 461, s. 22; 1981, c. 619, s. 5; 1985, c. 447, ss. 1, 2; 1987, c. 710; 1989 (Reg. Sess., 1990), c. 968; 1997-399, s. 15; 2001-294, s. 5; 2007-531, s. 6.)

§ 90-210.29. Students.

(a) Students who are enrolled in duly accredited mortuary science colleges in North Carolina may engage in the practices defined in this Article if the practices are part of their academic training and if the practices are under the supervision of a licensed instructor of mortuary science or a licensee designated by the mortuary science college upon registration with the Board.

(b) Repealed by Session Laws 2001-294, s. 6. (1979, c. 461, s. 22; 2001-294, s. 6.)

§ 90-210.29A. Identification of bodies before burial or cremation.

The funeral director or person otherwise responsible for the final disposition of a dead body shall, prior to the interment or entombment of the dead body, affix on the ankle or wrist of the dead body, or, if cremated, on the inside of the temporary container or urn containing the remains of the dead body, a tag of durable, noncorroding material permanently marked with the name of the deceased, the date of death, the social security number of the deceased, the county and state of death, and the site of interment or entombment. (1995, c. 312, s. 1; 2003-420, s. 10.)

§ 90-210.29B. Examination scores not public record.

The examination scores of applicants for licensure shall not be subject to the provisions of Chapter 132 of the General Statutes. The Board shall release to any person requesting examination scores whether or not the applicant has obtained a passing score at the time of the request. (2007-484, s. 43.9; 2007-531, s. 7.)

Article 13D.

Preneed Funeral Funds.

§ 90-210.60. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) "Board" means the North Carolina Board of Funeral Service as created pursuant to Article 13A of Chapter 90 of the General Statutes;
- (2) "Financial institution" means a bank, credit union, trust company, savings bank, or savings and loan association authorized by law to do business in this State;
- (3) "Insurance company" means any corporation, limited liability company, association, partnership, society, order, individual or aggregation of individuals engaging in or proposing or attempting to engage as principals in any kind of insurance business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations;
- (3a) "Legal representative" means the person authorized by G.S. 130A-420 who would be otherwise authorized to dispose of the remains of the preneed funeral contract beneficiary.
- (4) "Prearrangement insurance policy" means a life insurance policy, annuity contract, or other insurance contract, or any series of contracts or agreements in any form or manner, issued by an insurance company authorized by law to do business in this State, which, whether by assignment or otherwise, has for a purpose the funding of a preneed funeral contract or an insurance-funded funeral or burial prearrangement, the insured or annuitant being the person for whose service the funds were paid;
- (5) "Preneed funeral contract" means any contract, agreement, or mutual understanding, or any series or combination of contracts, agreements, or mutual understandings, whether funded by trust deposits or prearrangement insurance policies, or any combination thereof, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, or mausoleum;
- (6) "Preneed funeral contract beneficiary" means the person upon whose death the preneed funeral contract will be performed; this person may also be the purchaser of the preneed funeral contract;
- (7) "Preneed funeral funds" means all payments of cash made to any person, partnership, association, corporation, or other entity upon any preneed funeral contract or any other agreement, contract, or prearrangement insurance policy, or any series or combination of preneed funeral contracts or any other agreements, contracts, or prearrangement insurance policies, but excluding the furnishing of cemetery lots, crypts, niches, and mausoleums, which have for a purpose or which by operation provide for the furnishing or performance of funeral or burial services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition

- of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, or the providing of the proceeds of any insurance policy for such use;
- (8) "Preneed funeral planning" means offering to sell or selling preneed funeral contracts, or making other arrangements prior to death for the providing of funeral services or merchandise;
 - (9) "Preneed licensee" means a funeral establishment which has applied for and has been granted a license to sell preneed funeral contracts under the Article. Such license is also referred to in this Article as a "preneed funeral establishment license." (1969, c. 187, s. 1; 1983, c. 657, s. 1; 1985, c. 12, s. 1; 1991 (Reg. Sess., 1992), c. 901, s. 2; 1993, c. 553, s. 27; 1997-399, s. 23; 2001-294, ss. 7, 8; 2003-420, s. 1; 2007-531, s. 7.1; 2010-96, s. 38; 2010-102, s. 6; 2010-191, s. 3.)

§ 90-210.61. Deposit or application of preneed funeral funds.

(a) Preneed funeral funds are subject to the provisions of this Article and shall be deposited or applied as follows:

- (1) If the preneed funeral contract purchaser chooses to fund the preneed funeral contract by a trust deposit or deposits, the preneed licensee shall deposit all funds in an insured account in a financial institution, in trust, in the preneed licensee's name as trustee within five business days. The preneed licensee, at the time of making the deposit as trustee, shall furnish to the financial institution the name of each preneed funeral contract purchaser and the amount of payment on each for which the deposit is being made. The preneed licensee may establish an individual trust fund for each preneed funeral contract or a common trust fund for all preneed funeral contracts. The trust accounts shall be carried in the name of the preneed licensee as trustee, but accounting records shall be maintained for each individual preneed funeral contract purchaser showing the amounts deposited and invested, and interest, dividends, increases, and accretions earned. Except as provided in this Article, all interest, dividends, increases, or accretions earned by the funds shall remain with the principal. The trust fund may be charged with applicable taxes and for reasonable charges paid by the trustee to itself or others for the preparation of fiduciary tax returns. Penalties charged by a financial institution for early withdrawals caused by a transfer pursuant to G.S. 90-210.63 shall be paid by the preneed licensee. Penalties charged as a result of other early withdrawals as permitted by this Article shall be paid from the trust fund, and the financial institution shall give the preneed funeral contract purchaser prompt notice of these penalties.
- (2) Notwithstanding any other provision of law, if a preneed funeral contract is funded by a trust deposit or trust deposits, a preneed licensee may retain, free of the trust, up to ten percent (10%) of any payments made on a preneed funeral contract, provided that the preneed licensee fully discloses in writing in advance to the preneed funeral contract purchaser the percentage of the payments to be retained. If there is no substitution pursuant to G.S. 90-210.63(a), the preneed licensee shall give credit for the amount retained

upon the death of the preneed funeral contract beneficiary and performance of the preneed funeral contract.

- (3) If the preneed funeral contract purchaser chooses to fund the contract by a prearrangement insurance policy, the preneed licensee shall apply all funds received for this purpose to the purchase of the prearrangement insurance policy within five business days. The preneed licensee shall notify the insurance company of the name of each preneed funeral contract purchaser and the amount of each payment when the prearrangement insurance policy or policies are purchased.

(b) Except as provided by this Article or by the preneed funeral contract, all payments made by the purchaser of a preneed funeral contract or prearrangement insurance policy shall remain trust funds within a financial institution or as paid insurance premiums with an insurance company, as the case may be, until the death of the preneed funeral contract beneficiary and until full performance of the preneed funeral contract.

(c) Each preneed licensee may establish and maintain with a financial institution of its choice, a preneed funeral fund clearing account. Preneed funeral funds received by a preneed licensee may be deposited and held in such an account until disbursed by the preneed licensee to fund a preneed funeral contract pursuant to subdivisions (a)(1) or (a)(3) of this section. This account shall be used solely for the receipt and disbursement of preneed funeral funds.

(d) Funds deposited in trust under a revocable standard preneed funeral contract may, with the written permission of the preneed funeral contract purchaser, be withdrawn by the trustee and used to purchase a prearrangement insurance policy. Except as provided in this subsection, no funds deposited in trust in a financial institution pursuant to this Article shall be withdrawn by the trustee to purchase a prearrangement insurance policy.

(e) Except as provided by G.S. 90-210.61(c), at no time before making a deposit or purchasing a prearrangement insurance policy may a preneed licensee, or its agents or employees, deposit in its own account or the account of any other person any monies coming into its hands for the purpose of purchasing services, merchandise, or prearrangement insurance policies under the provisions of this Article. (1969, c. 187, ss. 2, 4; 1981 (Reg. Sess., 1982), c. 1336, s. 1; 1983, c. 657, ss. 2, 4; 1985, c. 12, ss. 1-3; 1987, c. 430, ss. 15, 16; c. 879, s. 6.2; 1989, c. 485, s. 16; c. 738, s. 2; 1991 (Reg. Sess., 1992), c. 901, s. 2.)

§ 90-210.62. Types of preneed funeral contracts; forms.

(a) A preneed licensee may offer standard preneed funeral contracts and inflation-proof preneed funeral contracts. A standard preneed funeral contract applies the trust funds or insurance proceeds to the purchase price of funeral services and merchandise at the time of death of the contract beneficiary without protection against potential future price increases. An inflation-proof contract establishes an agreement between the preneed licensee and the purchaser for funeral services and merchandise without regard to potential future price increases. Upon written disclosure to the purchaser of a preneed funeral contract, inflation-proof contracts may permit the preneed licensee to retain all of the preneed funeral contract trust funds on deposit, and all insurance proceeds, even those in excess of the retail cost of goods and services provided, when the preneed licensee has fully performed the preneed funeral contract. Preneed funeral contracts may be revocable or irrevocable, at the option of the preneed funeral contract purchaser.

(b) The Board may prescribe forms for preneed funeral contracts consistent with this Article. All contracts must be in writing on forms prescribed by the Board. Any use or attempted use of any oral preneed funeral contract or any written contract in a form not prescribed by the Board shall be deemed a violation of this Article. (1991 (Reg. Sess., 1992), c. 901, s. 2; 2007-531, s. 8.)

§ 90-210.63. Substitution of licensee.

(a) If the preneed funeral contract is irrevocable, the preneed funeral contract purchaser, or after his death the preneed funeral contract beneficiary or his legal representative, upon written notice to the financial institution or insurance company and the preneed licensee who is a party to the preneed funeral contract, may direct the substitution of a different funeral establishment to furnish funeral services and merchandise.

- (1) If the substitution is made after the death of the preneed funeral contract beneficiary, a funeral establishment providing any funeral services or merchandise need not be a preneed licensee under this Article to receive payment for such services or merchandise. The original contracting preneed licensee shall be entitled to payment for any services or merchandise provided pursuant to G.S. 90-210.65(d). If the substitution is made before the death of the preneed funeral contract beneficiary, the substitution must be to a preneed licensee. If the preneed funeral contract is funded by a trust deposit or deposits, the financial institution shall immediately pay the funds held to the original contracting preneed licensee.
- (2) The original contracting preneed licensee shall immediately pay all funds received to the successor funeral establishment designated. Regardless of whether the substitution is made before or after the death of the preneed funeral contract beneficiary, the original contracting preneed licensee shall not be required to give credit for the amount retained pursuant to G.S. 90-210.61(a)(2), except when there was a substitution under G.S. 90-210.68(d1) and (e). Upon making payments pursuant to this subsection, the financial institution and the original contracting preneed licensee shall be relieved from all further contractual liability thereon.
- (3) If the preneed funeral contract is funded by a prearrangement insurance policy, the insurance company shall not pay any of the funds until the death of the preneed funeral contract beneficiary, and the insurance company shall pay the funds in accordance with the terms of the policy.

(b) The person giving notice of the substitution of a preneed licensee and the successor preneed licensee shall enter into a new preneed funeral contract for the funds transferred, and this Article shall apply, including the duty of the successor preneed licensee to deposit all of the funds in a financial institution if the death of the preneed funeral contract beneficiary has not occurred. Nothing in this subsection shall be construed to permit the use of the transferred funds to purchase a prearrangement insurance policy, nor to permit an irrevocable preneed funeral contract to be made revocable or to result in the payment of any of the transferred funds to the preneed funeral contract purchaser or to the preneed funeral contract beneficiary or his estate, except as provided by G.S. 90-210.64(b). (1991 (Reg. Sess., 1992), c. 901, s. 2; 1993, c. 242, s. 1; 1997-399, s. 24; 2003-420, s. 11.)

§ 90-210.63A. Amendment of preneed funeral contracts.

(a) Unless otherwise provided by this Article, preneed funeral contracts may be modified by mutual consent of the contracting preneed funeral establishment and the preneed contract purchaser, or after the death of the preneed contract purchaser, the preneed contract beneficiary or his or her legal representative.

(b) When the preneed contract purchaser and preneed contract beneficiary are the same, the preneed contract purchaser may designate one or more individuals to change the arrangements or performing funeral establishment, or may designate that the arrangements or performing funeral establishment may not be changed without an order from the clerk of superior court in the county where probate proceedings are instituted upon a finding that the change is in the best interest of the estate.

(c) If the preneed purchaser, or after his or her death, the preneed contract beneficiary or his or her legal representative, and the contracting preneed funeral establishment agree to modify any goods or services selected under an inflation-proof contract, the preneed licensee shall not be required to guarantee the price of the modified goods and services at the time of death and all other funeral goods and service selected shall remain guaranteed. If the modifications increase the purchase price, the provisions of G.S. 90-210.64(b) shall apply as if the modified contract had been executed on the original date. If the modifications decrease the purchase price, the preneed licensee shall refund all monies according to the provisions of G.S. 90-210.64(d). (2007-531, s. 9.)

§ 90-210.64. Death of preneed funeral contract beneficiary; disposition of funds.

(a) After the death of a preneed funeral contract beneficiary and full performance of the preneed funeral contract by the preneed licensee, the preneed licensee shall promptly complete a certificate of performance and present it to the financial institution that holds funds in trust under G.S. 90-210.61(a)(1) or to the insurance company that issued a preneed insurance policy pursuant to G.S. 90-210.61(a)(3). Upon receipt of the certificate of performance or similar claim form, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. Within 10 days after receiving payment, the preneed licensee shall file a copy of the certificate of performance or other claim form to the Board.

(b) Unless otherwise specified in the preneed funeral contract, the preneed licensee shall have no obligation to deliver merchandise or perform any services for which payment in full has not yet been deposited with a financial institution or that will not be provided by the proceeds of a prearrangement insurance policy. Any such amounts received which do not constitute payment in full shall be refunded to the estate of the deceased preneed funeral contract beneficiary or credited against the cost of merchandise or services contracted for by a representative of the deceased. Any balance remaining after payment for the merchandise and services as set forth in the preneed funeral contract shall be paid to the estate of the preneed funeral contract beneficiary or the prearrangement insurance policy beneficiary named to receive any such balance. Provided, however, unless the parties agree to the contrary, there shall be no refund to the estate of the preneed funeral contract beneficiary of an inflation-proof preneed funeral contract except as required by G.S. 90-210.63A(c).

(c) In the event that any person other than the contracting preneed licensee performs any funeral service or provides any merchandise as a result of the death of the preneed funeral contract beneficiary, the financial institution shall pay the trust funds to the contracting preneed

licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. The preneed licensee shall, subject to the provisions of G.S. 90-210.65(d), immediately pay the monies so received to the other provider.

(d) When the balance of a preneed funeral fund is one hundred dollars (\$100.00) or less and is payable to the estate of a deceased preneed funeral contract beneficiary and there has been no representative of the estate appointed, the balance due may be paid directly to a beneficiary or to the beneficiaries of the estate. If the balance of a preneed funeral fund exceeds one hundred dollars (\$100.00) or is not payable to the estate, the balance must be paid into the office of the clerk of superior court in the county where probate proceedings could be filed for the deceased preneed funeral contract beneficiary.

(e) Upon the fulfillment of a preneed contract, all of the following items shall be completed within 30 days:

- (1) The contracting preneed licensee must submit a certificate of performance or similar claim form to the financial institution holding the preneed trust funds and close the preneed account.
- (2) The proceeds of this trust account shall be distributed according to the terms of the preneed contract.
- (3) A completed copy of the certificate of performance or similar claim form evidencing the final disposition of any financial institution preneed trust account funds must be filed with the Board by the contracting licensee. (1991 (Reg. Sess., 1992), c. 901, s. 2; 1997-399, s. 25; 2001-294, s. 9; 2003-420, s. 12; 2007-531, s. 10.)

§ 90-210.65. Refund of preneed funeral funds.

(a) Within 30 days of receipt of a written request from the purchaser of a revocable preneed funeral contract who has trust funds deposited with a financial institution pursuant to G.S. 90-210.61(a), the financial institution shall refund to the preneed funeral contract purchaser the entire amount held by the financial institution.

(b) Within 30 days of receipt of a written notice of cancellation of any prearrangement insurance policy purchased pursuant to G.S. 90-210.61(a)(3), the issuing insurance company shall pay such amounts to such person or persons as is provided under the terms of the prearrangement insurance policy.

(c) After making refund pursuant to this section and giving notice of the refund to the preneed licensee, the financial institution or insurance company shall be relieved from all further liability.

(d) Notwithstanding any other provision of this Article, if a preneed funeral contract is revoked or transferred following the death of the preneed funeral contract beneficiary, the purchaser of the preneed funeral contract may be charged according to the contracting preneed licensee's price lists for any services performed or merchandise provided prior to revocation or transfer.

(e) This section shall not apply to irrevocable preneed funeral contracts. Irrevocable preneed funeral contracts may only be revoked or any proceeds refunded by the order of a court of competent jurisdiction, except as follows:

- (1) The Board may order an irrevocable contract revoked when the preneed contract beneficiary is no longer domiciled in this State and has submitted a written copy to the Board of a new preneed funeral contract executed under

the laws of the state where the preneed contract beneficiary is domiciled. Upon receipt of the Board's order, the original contracting preneed licensee shall immediately follow the provisions of G.S. 90-210.63 to transfer the funds to the successor firm.

- (2) Irrevocable preneed funeral contracts purchased pursuant to G.S. 90-210.61(a)(3) shall also be revocable when the underlying insurance policy lapses or is otherwise cancelled and the lapsed or cancelled policy no longer provides any funding for the preneed funeral contract. (1969, c. 187, s. 3; 1981 (Reg. Sess., 1982), c. 1336, s. 2; 1983, c. 657, s. 3; 1985, c. 12, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 901, s. 2; 2003-420, s. 13; 2007-531, s. 11.)

§ 90-210.66. Recovery fund.

(a) There is established the Preneed Recovery Fund. The Fund shall be administered by the Board. The purpose of the Fund is to reimburse purchasers of preneed funeral contracts who have suffered financial loss as a result of the malfeasance, misfeasance, default, failure or insolvency of any licensee under this Article, and includes refunds due a preneed funeral contract beneficiary from a preneed licensee who has retained any portion of the preneed funeral contract payments pursuant to G.S. 90-210.61(a)(2).

(b) From the fee for each preneed funeral contract as required by G.S. 90-210.67(d), the Board shall deposit two dollars (\$2.00) into the Fund. The Board may suspend the deposits into the Fund at any time and for any period for which the Board determines that a sufficient amount is available to meet likely disbursements and to maintain an adequate reserve.

(c) All sums received by the Board pursuant to this section shall be held in a separate account known as the Preneed Recovery Fund. Deposits to and disbursements from the Fund account shall be subject to rules established by the Board.

(d) The Board shall adopt rules governing management of the Fund, the presentation and processing of applications for reimbursement, and subrogation or assignment of the rights of any reimbursed applicant.

(e) The Board may expend monies in the Fund for the following purposes:

- (1) To make reimbursements on approved applications;
- (2) To purchase insurance to cover losses as deemed appropriate by the Board and not inconsistent with the purposes of the Fund;
- (3) To invest such portions of the Fund as are not currently needed to reimburse losses and maintain adequate reserves, as are permitted to be made by fiduciaries under State law; and
- (4) To pay the expenses of the Board for administering the Fund, including employment of legal counsel to prosecute subrogation claims.

(f) Reimbursements from the Fund shall be made only to the extent to which such losses are not bonded or otherwise covered, protected or reimbursed and only after the applicant has complied with all applicable rules of the Board.

(g) The Board shall investigate all applications made and may reject or allow such claims in whole or in part to the extent that monies are available in the Fund. The Board shall have complete discretion to determine the order and manner of payment of approved applications. All payments shall be a matter of privilege and not of right, and no person shall have any right in the Fund as a third-party beneficiary or otherwise. No attorney may be compensated by the Board for prosecuting an application for reimbursement.

(h) In the event reimbursement is made to an applicant under this section, the Board shall be subrogated in the reimbursed amount and may bring any action it deems advisable against any person, including a preneed licensee. The Board may enforce any claims it may have for restitution or otherwise and may employ and compensate consultants, agents, legal counsel, accountants and any other persons it deems appropriate.

(i) The Fund shall apply to losses arising after July 9, 1992, regardless of the date of the underlying preneed funeral contract. (1991 (Reg. Sess., 1992), c. 901, s. 2; 1997-399, s. 26.)

§ 90-210.67. Application for license.

(a) No person may offer or sell preneed funeral contracts or offer to make or make any funded funeral prearrangements without first securing a license from the Board. Notwithstanding any other provision of law, any person who offers to sell or sells a casket, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of in the casket, shall first comply with the provisions of this Article. There shall be two types of licenses: a preneed funeral establishment license and a preneed sales license. Only funeral establishments holding a valid establishment permit pursuant to G.S. 90-210.25(d) shall be eligible for a preneed funeral establishment license. Employees and agents of such entities, upon meeting the qualifications to engage in preneed funeral planning as established by the Board, shall be eligible for a preneed sales license. The Board shall establish the preneed funeral planning activities that are permitted under a preneed sales license. The Board shall adopt rules establishing such qualifications and activities no later than 12 months following the ratification of this act [Session Laws 1991 (Reg. Sess., 1992), c. 901, s. 2]. Preneed sales licensees may sell preneed funeral contracts, prearrangement insurance policies, and make funded funeral prearrangements only on behalf of one preneed funeral establishment licensee; provided, however, they may sell preneed funeral contracts, prearrangement insurance policies, and make funeral prearrangements for any number of licensed preneed funeral establishments that are wholly owned by or affiliated with, through common ownership or contract, the same entity; provided further, in the event they engage in selling prearrangement insurance policies, they shall meet the licensing requirements of the Commissioner of Insurance. Every preneed funeral contract shall be signed by a person licensed as a funeral director or funeral service licensee pursuant to Article 13A of Chapter 90 of the General Statutes.

Application for a license shall be in writing, signed by the applicant and duly verified on forms furnished by the Board. Each application shall contain at least the following: the full names and addresses (both residence and place of business) of the applicant, and every partner, member, officer and director thereof if the applicant is a partnership, limited liability company, association, or corporation and any other information as the Board shall deem necessary. A preneed funeral establishment license shall be valid only at the address stated in the application or at a new address approved by the Board.

(b) An application for a preneed funeral establishment license shall be accompanied by a nonrefundable application fee of not more than four hundred dollars (\$400.00). The Board shall set the amounts of the application fees and renewal fees, by rule. A funeral establishment receiving a new preneed establishment license after January 1, 2008, or whose preneed establishment license has lapsed or was terminated for any reason after January 1, 2008, shall obtain a surety bond in an amount not less than fifty thousand dollars (\$50,000) for five years, or upon demonstrating that it is solvent, no less than one year from the date the original license is

issued. The Board may extend the bonding requirement in the event there is a claim paid from the bond.

If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed funeral establishment license unless it determines that the applicant has violated any provision of G.S. 90-210.69(c) or has made false statements or representations in the application, or is insolvent, or has conducted or is about to conduct, its business in a fraudulent manner, or is not duly authorized to transact business in this State. The license shall expire on December 31 and each preneed funeral establishment licensee shall pay annually to the Board on or before that date a license renewal fee of not more than two hundred fifty dollars (\$250.00). On or before the first day of February immediately following expiration, a license may be renewed without paying a late fee. After that date, a license may be renewed by paying a late fee of not more than one hundred dollars (\$100.00) in addition to the annual renewal fee.

(c) An application for a preneed sales license shall be accompanied by a nonrefundable application fee of not more than fifty dollars (\$50.00). The Board shall set the amounts of the application fees and renewal fees by rule, but the fees shall not exceed fifty dollars (\$50.00). If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed sales license provided the applicant has met the qualifications to engage in preneed funeral planning as established by the Board unless it determines that the applicant has violated any provision of G.S. 90-210.69(c). The license shall expire on December 31 and each preneed sales licensee shall pay annually to the Board on or before that date a license renewal fee of not more than fifty dollars (\$50.00). On or before the first day of February, a license may be renewed without paying a late fee. After that date, a license may be renewed by paying a late fee of not more than twenty-five dollars (\$25.00) in addition to the annual renewal fee.

(d) Any person selling a preneed funeral contract, whether funded by a trust deposit or a prearrangement insurance policy, shall remit to the Board, within 10 days of the sale, a fee not to exceed twenty dollars (\$20.00) for each sale and a copy of each contract. The person shall pay a late fee of not more than twenty-five dollars (\$25.00) for each late filing and payment. The fees shall not be remitted in cash.

(d1) The Board may also set and collect a fee of not more than twenty-five dollars (\$25.00) for the late filing of a certificate of performance and a fee of not more than one hundred and fifty dollars (\$150.00) for the late filing of an annual report.

(e), (f). Repealed by Session Laws 2003-420, s. 14, effective October 1, 2003. (1969, c. 187, s. 5; 1981, c. 671, ss. 16, 17; 1983, c. 657, s. 4; 1985, c. 12, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 901, s. 2; 1995 (Reg. Sess., 1996), c. 665, s. 1; 1997-399, s. 27; 2001-294, s. 10; 2003-420, s. 14; 2007-531, s. 12.)

§ 90-210.68. Licensee's books and records; notice of transfers, assignments and terminations.

(a) Every preneed licensee shall keep for examination by the Board accurate accounts, books, and records in this State of all preneed funeral contract and prearrangement insurance policy transactions, copies of all agreements, insurance policies, instruments of assignment, the dates and amounts of payments made and accepted thereon, the names and addresses of the

contracting parties, the persons for whose benefit funds are accepted, and the names of the financial institutions holding preneed funeral trust funds and insurance companies issuing prearrangement insurance policies. The Board, its inspectors appointed pursuant to G.S. 90-210.24 and its examiners, which the Board may appoint to assist in the enforcement of this Article, may during normal hours of operation and periods shortly before or after normal hours of operation, investigate the books, records, and accounts of any licensee under this Article with respect to trust funds, preneed funeral contracts, and prearrangement insurance policies. Any preneed licensee who, upon inspection, fails to meet the requirements of this subsection or who fails to keep an appointment for an inspection shall pay a reinspection fee to the Board in an amount not to exceed one hundred dollars (\$100.00). The Board may require the attendance of and examine under oath all persons whose testimony it may require. Every preneed licensee shall submit a written report to the Board, at least annually, in a manner and with such content as established by the Board, of its preneed funeral contract sales and performance of such contracts. The Board may also require other reports.

(b) A preneed licensee may transfer preneed funds held by it as trustee from the financial institution which is a party to a preneed funeral contract to a substitute financial institution that is not a party to the contract. Within 10 days after the transfer, the preneed licensee shall notify the Board, in writing, of the name and address of the transferee financial institution. Before the transfer may be made, the transferee financial institution shall agree to make disclosures required under the preneed funeral contract to the Board or its inspectors or examiners. If the contract is revocable, the licensee shall notify the contracting party of the intended transfer.

(c) If any preneed licensee transfers or assigns its assets or stock to a successor funeral establishment or terminates its business as a funeral establishment, the preneed licensee and assignee shall notify the Board at least 15 days prior to the effective date of the transfer, assignment or termination: provided, however, the successor funeral establishment must be a preneed licensee or shall be required to apply for and be granted such license by the Board before accepting any preneed funeral contracts, whether funded by trust deposits or preneed insurance policies. Provided further, a successor funeral establishment shall be liable to the preneed funeral contract purchasers for the amount of contract payments retained by the assigning or transferring funeral home pursuant to G.S. 90-210.61(a)(2).

(d) Financial institutions that accept preneed funeral trust funds and insurance companies that issue prearrangement insurance policies shall, upon request by the Board or its inspectors or examiners, disclose any information regarding preneed funeral trust accounts held or prearrangement insurance policies issued by it for a preneed licensee.

Financial institutions that accept preneed funeral trust funds and insurance companies that assign policy proceeds or designate a preneed funeral establishment as beneficiary shall also forward an account balance to the contracting preneed funeral establishment at the end of each calendar year.

(d1) When a preneed funeral establishment license lapses or is terminated for any reason, the preneed licensee shall immediately divest of all the unperformed preneed funeral contracts and shall transfer them and any amounts retained under G.S. 90-210.61(a)(2) to another preneed funeral establishment licensee pursuant to the procedures of subsection (e) of this section.

(e) In the event that any preneed licensee is unable or unwilling or is for any reason relieved of its responsibility to perform as trustee or to perform any preneed funeral contract, the Board shall order the contract and any amounts retained pursuant to G.S. 90-210.61(a)(2) to be assigned to a substitute preneed licensee provided that neither the substitute preneed licensee or

preneed contract purchaser, or after the death of the preneed contract purchaser, the preneed contract beneficiary or his or her legal representative, shall be obligated to perform the agreement without executing a new preneed funeral contract. Any lapse or transfer of a preneed contract pursuant to this section shall not be grounds to revoke an irrevocable preneed funeral contract.

(f) The substitute preneed licensee under subsections (d1) and (e) of this section shall be liable to the preneed funeral contract purchasers for the amount of contract payments that had been retained by, and that the substitute preneed licensee has received from, the assigning preneed licensee. (1969, c. 187, s. 6; 1983, c. 657, ss. 4, 5; 1985, c. 12, s. 1; 1991 (Reg. Sess., 1992), c. 901, s. 2; 1993, c. 164, s. 3; 1997-399, s. 28; 2007-531, ss. 13, 14.)

§ 90-210.69. Rulemaking; enforcement of Article; judicial review; determination of penalty amount.

(a) The Board is authorized to adopt rules for the carrying out and enforcement of the provisions of this Article. The Board may perform such other acts and exercise such other powers and duties as are authorized by this Article and by Article 13A of this Chapter to carry out its powers and duties.

(b) The Board may administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records in any investigation conducted by it. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas and other papers given to them by the Board for service in the same manner as process issued by any court of record. Any person who does not obey a subpoena issued by the Board shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

(c) In accordance with the provisions of Chapter 150B of the General Statutes, if the Board finds that a licensee, an applicant for a license or an applicant for license renewal is guilty of one or more of the following, the Board may refuse to issue or renew a license or may suspend or revoke a license or place the holder thereof on probation upon conditions set by the Board, with revocation upon failure to comply with the conditions:

- (1) Offering to engage or engaging in activities for which a license is required under this Article but without having obtained such a license.
- (2) Aiding or abetting an unlicensed person, firm, partnership, association, corporation or other entity to offer to engage or engage in such activities.
- (3) A crime involving fraud or moral turpitude by conviction thereof.
- (4) Fraud or misrepresentation in obtaining or receiving a license or in preneed funeral planning.
- (5) False or misleading advertising.
- (6) Violating or cooperating with others to violate any provision of this Article, the rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.
- (7) Denial, suspension, or revocation of an occupational or business license by another jurisdiction.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than five thousand dollars (\$5,000). In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also

impose a penalty of not more than five thousand dollars (\$5,000) in conjunction with such probation.

(d) Any proceedings pertaining to or actions against a funeral establishment under this Article may be in addition to any proceedings or actions permitted by G.S. 90-210.25(d)(4). Any proceedings pertaining to or actions against a person licensed for funeral directing or funeral service may be in addition to any proceedings or actions permitted by G.S. 90-210.25 (e)(1) and (2).

(e) Judicial review shall be pursuant to Article 4 of Chapter 150B of the General Statutes.

(f) In determining the amount of any penalty imposed or assessed under Article 13 of Chapter 90 of the General Statutes, the Board shall consider:

- (1) The degree and extent of harm to the public health, safety, and welfare, or to property, or the potential for harm.
- (2) The duration and gravity of the violation.
- (3) Whether the violation was committed willfully or intentionally or reflects a continuing pattern.
- (4) Whether the violation involved elements of fraud or deception either to the public or to the Board, or both.
- (5) The violator's prior disciplinary record with the Board.
- (6) Whether and the extent to which the violator profited by the violation. (1969, c. 187, s. 7; 1983, c. 657, s. 4; 1985, c. 12, s. 1; 1991 (Reg. Sess., 1992), c. 901, s. 2; 1997-399, ss. 29, 30; 2001-294, s. 11; 2004-203, s. 7; 2007-531, s. 15.)

§ 90-210.70. Penalties.

(a) Anyone who embezzles or who fraudulently, or knowingly and willfully misapplies, or in any manner converts preneed funeral funds to his own use, or for the use of any partnership, corporation, association, or entity for any purpose other than as authorized by this Article; or anyone who takes, makes away with or secretes, with intent to embezzle or fraudulently or knowingly and willfully misapply or in any manner convert preneed funeral funds for his own use or the use of any other person for any purpose other than as authorized by this Article shall be guilty of a felony. If the value of the preneed funeral funds is one hundred thousand dollars (\$100,000) or more, violation of this section is a Class C felony. If the value of the preneed funeral funds is less than one hundred thousand dollars (\$100,000), violation of this section is a Class H felony. Each such embezzlement, conversion, or misapplication shall constitute a separate offense and may be prosecuted individually. Upon conviction, all licenses issued under this Article shall be revoked.

(b) Any person who willfully violates any other provision of this Article shall be guilty of a Class 1 misdemeanor. Each such violation shall constitute a separate offense and may be prosecuted individually.

(c) If a corporation or limited liability company embezzles or fraudulently or knowingly and willfully misapplies or converts preneed funeral funds as provided in subsection (a) hereof or otherwise violates any provision of this Article, the officers, directors, members, agents, or employees responsible for committing the offense shall be fined or imprisoned as herein provided.

(d) The Board shall have the power to investigate violations of this section and shall deliver all evidence of violations of subsection (a) of this section to the district attorney in the

county where the offense occurred. The Board shall, with the fees collected under this Article, employ legal counsel and other staff to monitor preneed trusts, investigate complaints, audit preneed trusts, and be responsible for delivering evidences to the district attorney when there is evidence that a felony has been committed by a licensee. The record of complaints, auditing, and enforcement shall be presented in an annual report from the Board to the General Assembly.

(e) Whenever it shall appear to the Board that any person, firm, or corporation has violated, threatens to violate, or is violating any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain these practices. If upon application the court finds that any provision of this Article is being violated, or a violation is threatened, the court shall issue an order restraining and enjoining the violations, and this relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this subsection. The venue for actions brought under this subsection shall be the superior court of any county in which the acts are alleged to have been committed or in the county where the defendant in the action resides. (1969, c. 187, s. 8; 1985, c. 12, s. 1; 1991 (Reg. Sess., 1992), c. 901, s. 2; 1993 (Reg. Sess., 1994), c. 767, s. 28; 1997-399, ss. 31, 32; 1997-443, s. 19.25(o); 2003-420, s. 15.)

§ 90-210.71. Nonregulation of insurance sales.

The provisions of this Article do not regulate the issuance and sale of insurance policies, but apply only to the underlying preneed funeral contracts. (1991 (Reg. Sess., 1992), c. 901, s. 2.)

§ 90-210.72. Nonapplication to certain funeral contracts.

This Article does not apply to contracts for funeral services or merchandise sold as preneed burial insurance policies pursuant to Part 13 of Article 10 of Chapter 143B of the North Carolina General Statutes or to replacements or conversions of such policies pursuant to G.S. 143B-472.28. (1991 (Reg. Sess., 1992), c. 901, s. 2.)

§ 90-210.73. Not public record.

The names and addresses of the purchasers and beneficiaries of preneed funeral contracts filed with the Board shall not be subject to Chapter 132 of the General Statutes. (1997-399, s. 33.)

§§ 90-210.74 through 90-210.79. Reserved for future codification purposes.

Article 13E.

Mutual Burial Associations.

§ 90-210.80. Duties of Board; meetings.

It shall be the duty of the North Carolina Board of Funeral Service to supervise, pursuant to this Article, all burial associations authorized by this Article to operate in North Carolina, to determine that such associations are operated in conformity with this Article and the rules adopted pursuant to this Article; to prosecute violations of this Article or rules adopted pursuant thereto; and to protect the interest of members of mutual burial associations.

The North Carolina Board of Funeral Service, after a public hearing, may promulgate reasonable rules and regulations for the enforcement of this Article and in order to carry out the intent thereof. The Board is authorized and directed to adopt specific rules to provide for the orderly transfer of a member's benefits in cash or merchandise and services from the funeral director sponsoring the member's association to the funeral establishment which furnishes a funeral service, or merchandise, or both, for the burial of the member, provided that any funeral establishment to which the member's benefits are transferred in accordance with such rules shall, if located in North Carolina, be a funeral establishment registered and permitted under the provisions of G.S. 90-210.25 or shall, if located in any other state, territory or foreign country, be a funeral establishment recognized by and operating in conformity with the laws of such other state, territory or foreign country. One or more burial associations operating in North Carolina may merge into another burial association operating in North Carolina and two or more burial associations operating in North Carolina may consolidate into a new burial association provided that any such plan of merger or plan of consolidation shall be adopted and carried out in accordance with rules adopted by the Board pursuant to this Article.

All rules heretofore adopted by the North Carolina Mutual Burial Association Commission or the North Carolina Board of Funeral Service in accordance with prior law and which have not been amended, rescinded, revoked or otherwise changed, or which have not been nullified or made inoperative or unenforceable because of any statute enacted after the adoption of any such rule, shall remain in full force and effect until amended, rescinded, revoked or otherwise changed by action of the North Carolina Board of Funeral Service as set out above, or until nullified or made inoperative or unenforceable because of statutory enactment or court decision.

Members of the Board shall receive, when attending such regular or special meetings such per diem, expense allowance and travel allowance as are allowed other commissions and boards of the State. The legal adviser to the Board shall be entitled to actual expenses when attending regular or special meetings of the Board held other than in Raleigh. All expenses of the Board shall be paid from funds coming to the Board pursuant to this Article or appropriated for this purpose. (1967, c. 1197, s. 2; 1971, c. 1151; 1973, c. 1147, s. 1; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, ss. 3, 5; 1999-425, s. 1; 2003-420, ss. 1, 17(b).)

§ 90-210.81. Requirements as to rules and bylaws.

All burial associations now operating within the State of North Carolina shall have and maintain rules and bylaws embodying the following:

Article 1. The name of this association shall be _____, which shall indicate that said association is a mutual burial association.

Article 2. The objects and purposes for which this association is formed and the purposes for which it has been organized, and the methods and plan of operation of this association shall be to provide a plan for each member of this association for the payment of one funeral benefit for

each member, which shall consist of a funeral benefit in cash or merchandise and service, with no free embalming or free ambulance service included in this benefit. No other free service or any other thing free shall be held out, promised or furnished, in any case. Such funeral benefit shall be in the amount of one hundred dollars (\$100.00) of cash or merchandise and service, without free embalming or free ambulance service, for persons of the age of 10 years and over, or in the amount of fifty dollars (\$50.00) for persons under the age of 10 years; provided, however, that any member of this association of the age of 10 years or more may purchase a double benefit (for a total benefit of two hundred dollars (\$200.00)), and provided further, however, that any member of this association under the age of 10 years may purchase a double benefit (for a total benefit of one hundred dollars (\$100.00)) or a quadruple benefit (for a total benefit of two hundred dollars (\$200.00)); however, any additional benefit (as set out herein) shall be based on the assessment rate, as provided in Article 6 of this section, at the attained age of applicant at the time the additional benefit takes effect. The purchase of an additional benefit shall not be available to any member who cannot fulfill the requirements as set forth in Article 3 of this section.

Provided, further, that mutual burial associations organized and operating pursuant to this Article may offer for sale to its members in good standing, funeral benefits payable only in cash in excess of two hundred dollars (\$200.00), but those sales shall be subject to all applicable insurance laws of this State and shall in no manner be subject to the provisions of this Article or impair whatsoever funds heretofore or hereafter collected and held by that Association pursuant to this Article. All mutual burial association policies heretofore or hereafter sold in this State in an amount of two hundred dollars (\$200.00) or less shall continue to be administered by the Board of Funeral Service and shall be subject to all provisions of this Article.

Article 3. Any person who has passed his or her first birthday, and who has not passed his or her sixty-fifth birthday, and who is in good health and not under treatment of any physician, nor confined in any institution for the treatment of mental or other disease, may become a member of this burial association by the payment by such person, or for such person, of a membership fee in accordance with the provisions of this Article and the first assessment due on the membership issued for such member in accordance with the provisions of Article 6 herein. The membership fee for any person joining prior to July 1, 1975, is twenty-five cents (25¢). The membership fee of any person joining after July 1, 1975, is twenty-five cents (25¢) for each one hundred dollars (\$100.00) of benefits provided in such membership, with a minimum membership fee of twenty-five cents (25¢). The payment of the membership fee, without the payment of the first quarterly assessment due on the membership, shall not authorize the issuance of a certificate of membership in this burial association, and a certificate of membership for such person shall not be issued until the first such assessment is paid. Any member of this association joining after July 1, 1975, and who shall thereafter purchase an increased benefit shall pay an additional membership fee in accordance with this Article so that the total membership fee paid by such person shall equal twenty-five [cents] (25¢) for each one hundred dollars (\$100.00) of benefits in such member's membership; provided, that any member with a fifty-dollar (\$50.00) benefit who increases his benefit from fifty dollars (\$50.00) to one hundred dollars (\$100.00) shall not be required to pay any additional membership fee. The payment of any additional membership fee, without the payment of the first additional assessment due for the increased benefit, shall not make such member eligible for any additional benefit, and such member shall not be eligible for any additional benefit until the first such additional assessment due for such additional benefit is paid. Notwithstanding the foregoing, the provisions of the last paragraph of Article 6, hereinafter

set out, shall control the increase of benefits from fifty dollars (\$50.00) to one hundred dollars (\$100.00) for any member of this association joining under the age of 10 whose benefits in force upon such member attaining his or her tenth birthday are in the amount of fifty dollars (\$50.00).

Applicant's birthday must be written in the application and subject to verification by any record the Board of Funeral Service may deem necessary to prove or establish a true date of the birth of any applicant.

Article 4. The annual meeting of the association shall be held at ____ (here insert the place, date and hour); each member shall have one vote at said annual meeting and 15 members of the association shall constitute a quorum. There shall be elected at the annual meeting of said association a board of directors of seven members, each of whom shall serve for a period of from one to five years as the membership may determine and until his or her successor shall have been elected and qualified. Any member of the board of directors who shall fail to maintain his or her membership, as provided in the rules and bylaws of said association, shall cease to be a member of the board of directors and a director shall be appointed by the president of said association for the unexpired term of such disqualified member. There shall be at least an annual meeting of the board of directors, and such meeting shall be held immediately following the annual meeting of the membership of the association. The directors of the association may, by a majority vote, hold other meetings of which notice shall be given to each member by mailing such notice five days before the meeting to be held. At the annual meetings of the directors of the association, the board of directors shall elect a president, a vice-president, and a secretary-treasurer. The president and vice-president shall be elected from among the directors, but the secretary-treasurer may be selected from the director membership or from the membership of the association, it being provided that it is not necessary that the secretary-treasurer shall be a member of the board of directors. Among other duties that the secretary-treasurer may perform, he shall be chargeable with keeping an accurate and faithful roll of the membership of this association at all times and he shall be chargeable with the duty of faithfully preserving and faithfully applying all moneys coming into his hands by virtue of his said office. The president, vice-president and secretary-treasurer shall constitute a board of control who shall direct the affairs of the association in accordance with these Articles and bylaws of the association, and subject to such modification as may be made or authorized by an act of the General Assembly. The secretary-treasurer shall keep a record of all assessments made, dues collected and benefits paid. The books of the association, together with all records and bank accounts shall be at all times open to the inspection of the Board of Funeral Service or its duly constituted auditors or representatives. It shall be the duty of the secretary or secretary-treasurer of each association to keep the books of the association posted up-to-date so that the financial standing of the association may be readily ascertained by the Board of Funeral Service or any auditor or representative employed by it. Upon the failure of any secretary or secretary-treasurer to comply with this provision, it shall be the duty of the Board of Funeral Service to take charge of the books of the association and do whatever work is necessary to bring the books up-to-date. The actual costs of said work may be charged the burial association and shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association.

Whenever in the opinion of the Board of Funeral Service, it is necessary to audit the books of any burial association more than once in any calendar year, the Board of Funeral Service shall have authority to assess such burial association the actual cost of any audit in excess of one per calendar year, provided that no more than one audit may be deemed necessary unless a

discrepancy exists at the last regular audit. Such cost shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association.

Every burial association shall file with the Board of Funeral Service an annual report of its financial condition on a form furnished to it by the Board of Funeral Service. Such report shall be filed on or before February 15 of each calendar year and shall cover the complete financial condition of the burial association for the immediate preceding calendar year. The Board of Funeral Service shall levy and collect a penalty of twenty-five dollars (\$25.00) for each day after February 15 that the report called for herein is not filed. The Board may, in its discretion, grant any reasonable extension of the above filing date without the penalty provided in this section. Such penalty shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association. Any secretary or secretary-treasurer who fails to file such financial report on or before February 15 of each calendar year or on or before the last day of any period of extension for the filing of such report granted by the Board to the burial association of such secretary or secretary-treasurer shall be guilty of a Class 3 misdemeanor. Each day after February 15, or the last day of any period of extension for the filing of the report granted by the Board to the burial association of such secretary or secretary-treasurer, that said report is not filed by the secretary or secretary-treasurer of a burial association, shall constitute a separate offense.

Article 5. Upon the death of any officer, his successor shall be elected by the board of directors for the unexpired term. The president, vice-president and secretary-treasurer shall be elected for a term of from one to five years, and shall hold office until his successor is elected and qualified, subject to the power of the board of directors to remove any officer for good cause shown; provided, that any officer removed by the board of directors shall have the right of appeal to the membership of the association, such appeal to be heard at the next ensuing annual meeting of said membership.

Article 6. Each member shall be assessed according to the following schedule for the benefit indicated (or in multiples thereof for additional benefit) at the age of entry of the member.

Assessment Rate for Age Groups:

| | |
|--|--------------------|
| First to tenth birthday (\$50.00) benefit | five cents (5¢) |
| Tenth to thirtieth birthday (\$100.00) benefit | ten cents (10¢) |
| Thirtieth to fiftieth birthday (\$100.00) benefit | twenty cents (20¢) |
| Fiftieth to sixty-fifth birthday (\$100.00) benefit | thirty cents (30¢) |

(Ages shall be defined as having passed a certain birthday instead of nearest birthday.)
Assessment shall always be made on the entire membership in good standing.

Any member joining under the age of 10 shall, upon attaining his or her tenth birthday, pay thereafter the assessment for a member age 10 as set out above.

Any member joining under the age of 10 whose benefits in force upon such member attaining his or her tenth birthday are in the amount of fifty dollars (\$50.00) shall, if such member is in good standing upon attaining his or her tenth birthday, thereafter have benefits in force in the amount of one hundred dollars (\$100.00) without the necessity of making application for such

increased benefit. Assessments made thereafter for such member shall be the same as an assessment for a member age 10 as set out above. Such one-hundred-dollar (\$100.00) benefit shall be in full force and effect for any such member in good standing immediately upon such member attaining his or her tenth birthday even though the increased assessment provided for herein shall not yet be due and payable, it being the intent of this Article that, notwithstanding any other provisions in these Articles, any member in good standing with a fifty-dollar (\$50.00) benefit shall immediately upon attainment of his or her tenth birthday have a one-hundred-dollar (\$100.00) benefit in force whether or not the increased assessment is then due and payable by such member in accordance with the assessment period of this association.

Article 7. No benefit will be paid for natural death occurring within 30 days from the date of the certificate of membership, which certificate shall express the true date such person becomes a member of this association, and the certificate issued shall be in acknowledgment of membership in this association. Benefits will be paid for death caused by accidental means occurring any time after date of membership certificate. No benefits will be paid in case of suicidal death of any member within one year from the date of the membership certificate. No agent or other person shall have authority to issue membership certificates in the field, but such membership certificates shall be issued at the home office of the association by duly authorized officers: the president, vice-president or secretary, and a record thereof duly made.

Article 8. Any member failing to pay any assessment within 30 days after notice shall be in bad standing, and unless and until restored, shall not be entitled to benefits. Notice shall be presumed duly given when mailed, postage paid, to the last known address of such members: Provided, moreover, that notice to the head of a family shall be construed as notice to the entire membership of such family in said association. Any member or head of a family changing his or her address shall give notice to the secretary-treasurer in writing of such change, giving the old address as well as the new, and the head of a family notifying the secretary-treasurer of change in address shall list with the secretary in such notice all the members of his or her family having membership in said association. Any member in bad standing may, within 90 days after the date of an assessment notice, be reinstated to good standing by the payment of all delinquent dues and assessments: Provided such person shall at the same time submit to the secretary-treasurer satisfactory evidence of good health, in writing, and no benefit will be paid for natural death occurring within 30 days after reinstatement. In case of death caused by accidental means, benefit will be in force immediately after reinstatement. Any person desiring to discontinue his membership for any reason shall communicate such desire to the secretary-treasurer immediately and surrender his or her certificate of membership. Any adult member who is the head of a family and who, with his family, has become in bad standing, shall furnish to the secretary-treasurer satisfactory evidence of the good health of each member desired to be reinstated in writing.

Article 9. The benefits herein provided are for the purpose of furnishing a funeral and burial benefit, in cash or merchandise and service, for a deceased member. The funeral and burial benefit, if furnished in merchandise and service, shall be in keeping with and similar to the merchandise and service sold and furnished at the same price by reputable funeral directors of this or other like communities.

Article 10. It is understood and stipulated that the benefits provided for shall be payable only to a funeral establishment which provides a funeral service for a deceased member and which, if located in North Carolina, is a funeral establishment registered under the provisions of G.S. 90-210.25 or which, if located in any other state, territory or foreign country, is a funeral

establishment recognized by and operating in conformity with the laws of such other state, territory or foreign country. Upon the death of any member, it shall be the duty of the person or persons making the funeral arrangements for such deceased member to notify the secretary of the member's burial association of the death of such member. The person or persons making the funeral arrangements for such deceased member shall have 30 days from the date of the death of such member in which to make demand upon the burial association for the funeral benefits to which such member is entitled.

The benefits provided for are to be paid by the burial association to the funeral director providing such funeral and burial service either in cash or in merchandise and service as elected by the person or persons making the funeral arrangements for such deceased member. If the burial association shall fail, on demand, to provide the benefits to which the deceased member was entitled to the funeral establishment which provided the funeral service for the deceased member, then the benefits shall be paid in cash to the representative of the deceased member qualified under law to receive such benefits.

Article 11. Assessments shall be made as provided in G.S. 90-210.96. Whenever possible, assessments will be made at definitely stated intervals so as to reduce the cost of collection and to prevent lapse.

Article 12. In the event the proceeds of the annual assessments imposed on the entire membership for one year, as provided in G.S. 90-210.96, do not prove sufficient at any time to yield the benefit provided for in these bylaws, then the secretary-treasurer shall notify the Board of Funeral Service who shall be authorized, unless the membership is increased to that point where such assessments are sufficient, to cause liquidation of said association, and may transfer all members in good standing to a like organization or association.

Article 13. (a) All legitimate operating expenses of the association shall be paid out of the assessments, but in no case shall the entire expenses exceed thirty percent (30%) of the total of the assessments collected and the investment income of the burial association in one calendar year.

(b) Each burial association shall establish and maintain a reserve account for the payment of member's benefits. On the thirty-first day of December following July 1, 1975, each burial association shall transfer to such burial association's reserve account established in accordance with this Article all funds which such burial association is maintaining on that date in an account designated by such burial association as either a surplus account or a reserve account. Thereafter, beginning on January 1, 1976, each burial association shall place in such reserve account five percent (5%) of the assessments collected from and after that date and five percent (5%) of the investment income of the association earned from and after that date. These sums shall continue to be placed in the association's reserve account until the association's reserve account shall equal twenty-one dollars (\$21.00) per member. Thereafter if the reserve account shall fall below twenty-one dollars (\$21.00) per member, such sums shall again be deposited in the account until such time as the reserve account shall again be equal to twenty-one dollars (\$21.00) per member. If the reserve account shall at any time exceed twenty-one dollars (\$21.00) per member, amounts in excess of twenty-one dollars (\$21.00) per member may be withdrawn from the reserve account.

Article 14. Special meetings of the association membership may be called by the secretary-treasurer when by him deemed necessary or advisable, and he shall call a meeting when petitioned to do so by sixty-six and two-thirds percent (66 2/3%) of the members of said association who are in good standing.

Article 15. The secretary-treasurer shall, upon satisfactory evidence that membership was granted to any person not qualified at the time of entry as provided under Article 3 of these bylaws, refund any amounts paid as assessment, and shall remove the name from the membership roll.

Article 16. Any member may pay any number of assessments in advance, in which case such member will not be further assessed until a like number of assessments shall have been levied against the remaining membership.

Article 17. No person may maintain active membership in two or more separate burial associations. Any person who is found to have membership in two or more separate burial associations shall forfeit all benefits and fees paid in all associations of which he is a member except in the association which he first joined and of which he is still then a member. A person is not a member of an association for purposes of this Article if he has discontinued his membership in such association or if such association has been placed in liquidation.

Article 18. Each year, before the annual meeting of the membership of this association, the association shall cause to be published in a newspaper of general circulation in the county in which such association has its principal place of business, or shall cause to be mailed to each member in good standing a statement showing total income collected, expenses paid and burial benefits provided for by such association during the next preceding year.

Article 19. These rules and bylaws shall not be modified, canceled or abridged by any association or other authority except by act of the General Assembly of North Carolina. (1941, c. 130, s. 4; 1943, c. 272, ss. 1, 2; 1945, c. 125, s. 1; 1947, c. 100, s. 1; 1949, c. 201, ss. 1, 2; 1953, c. 1201; 1955, c. 259, ss. 3, 4; 1967, c. 1197, s. 4; 1969, c. 1041, ss. 2, 3; 1973, c. 688; 1975, c. 837; 1977, c. 748, ss. 1, 2, 6; 1981, c. 989, s. 4; 1987, c. 864, ss. 12, 50; 1991, c. 62, s. 1; 1991 (Reg. Sess., 1992), c. 1007, s. 39; 1993, c. 539, s. 1042; c. 553, ss. 48, 49; 1994, Ex. Sess., c. 24, s. 14(c); 1997-313, ss. 4-6; 1999-425, s. 2; 2003-420, ss. 1, 17(b).)

§ 90-210.82. Limitation of soliciting agents; licensing and qualifications; officers exempt from license; issuance of membership certificates.

Each burial association shall have for each funeral home sponsoring the said burial association not more than five agents or representatives soliciting members other than the secretary-treasurer and president, and before any agent or representative shall or may represent any burial association in North Carolina, he or she shall first apply to the Board of Funeral Service for a license, and the Board of Funeral Service shall have full power and authority to issue such license upon proof satisfactory to such Board that such person is capable of soliciting burial association memberships, is of good moral character and recommended by the association in behalf of which such membership solicitations are to be made. The Board of Funeral Service may reject the application of any person who does not meet the requirements as to capacity and moral fitness. The Board of Funeral Service may, upon proof satisfactory to it that said licensed agent has violated any section of this law, revoke said license. Upon the issuing of a license to solicit membership in any burial association, such person shall be required to pay in cash, at the time of issuing license to such applicant, to the Board of Funeral Service, the sum of five dollars (\$5.00); moneys derived from this fee or charge, are to be and remain in the department or office of such Board of Funeral Service, for supervision of burial associations in this State, subject to withdrawal for expenses of supervision by authority of the Board of Funeral Service. It shall not be necessary that the president or secretary-treasurer of any burial association obtain a license for soliciting membership in the association of which such person is president or secretary-treasurer.

Membership certificates shall not be issued by a solicitor in the field, but shall be reported to the office of the association and there issued and a record made of such issuance at the time such certificate is so issued. (1941, c. 130, s. 5; 1945, c. 125, s. 2; 1947, c. 100, s. 2; 1949, c. 201, s. 3; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, ss. 5, 6, 7; 2003-420, ss. 1, 17(b).)

§ 90-210.83. Assessments against associations.

In order to meet the expenses of the supervision of the burial associations, the Board of Funeral Service shall prepare an annual budget for the office of the Board of Funeral Service. Thereafter, the Board of Funeral Service shall assess each burial association one hundred dollars (\$100.00) and shall prorate the remaining amount of this budget, over and above any other funds made available to it for this purpose, and assess each association on a pro rata basis in accordance with the number of members of each association. Each burial association shall remit to the Board of Funeral Service its pro rata part of the total assessment, which expense shall be included in the thirty per centum (30%) expense allowance as provided in G.S. 90-210.81. This assessment shall be made on the first day of July of each and every year and said assessment shall be paid within 30 days thereafter. If any association shall fail or refuse to pay such assessment within 30 days, the Board of Funeral Service is authorized to transfer all memberships and assets of every kind and description to the nearest association that is found by the Board of Funeral Service to be in good sound financial condition. (1941, c. 130, s. 6; 1943, c. 272, s. 3; 1945, c. 125, s. 3; 1947, c. 100, s. 3; 1949, c. 201, s. 4; 1951, c. 901, s. 1; 1955, c. 259, ss. 1, 2; 1967, c. 985, s. 1; 1969, c. 1006, s. 2; 1973, c. 1476, s. 1; 1975, c. 837; 1977, c. 748, s. 3; 1981, c. 989, s. 6; 1983, c. 717, s. 12; 1987, c. 864, ss. 12, 14; 1997-313, ss. 5, 6, 7; 2003-420, ss. 16, 17(b).)

§ 90-210.84. Unlawful to operate without written authority of Board.

It shall be unlawful for any person, firm or corporation, association or organization to organize, operate, or in any way solicit members for a burial association, or for participation in any plan, scheme, or device similar to burial associations, without the written authority of the Board of Funeral Service, and any person, firm or corporation violating the provisions of this section shall be guilty of a Class 1 misdemeanor; provided, however, the Board of Funeral Service shall not withhold authority for the organization or operation of a bona fide burial association, meeting the requirements of this Article, unless it shall be found and established to the satisfaction of the Board of Funeral Service that the person or persons applying for authority to organize and operate such bona fide burial association is disqualified or does not meet the requirements of this Article. (1941, c. 130, s. 7; 1975, c. 837; 1987, c. 864, s. 12; 1993, c. 539, s. 1043; 1994, Ex. Sess., c. 24, s. 14(c); 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.85. Revocation of license.

In the event it is proven to the satisfaction of the Board of Funeral Service that any burial association is being operated not in conformity with any provision of this Article, then it shall become the duty of the Board of Funeral Service upon hearing to revoke the license of said burial association and transfer said burial association, its membership and all its assets of every kind and description to another burial association that is found by the Board of Funeral Service to be in good sound financial condition; provided, that if said burial association gives notice of appeal as provided for in G.S. 90-210.94, then said burial association may continue to operate as

before the revocation and until final adjudication. (1945, c. 125, s. 4; 1975, c. 837; 1987, c. 864, ss. 12, 15; 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.86. Deposit or investment of funds of mutual burial associations.

Funds belonging to each mutual burial association over and above the amount determined by the Board of Funeral Service to be necessary for operating capital shall be invested in:

- (1) Deposits in any bank or trust company in this State.
- (2) Obligations of the United States of America.
- (3) Obligations of any agency or instrumentality of the United States of America if the payment of interest and principal of such obligations is fully guaranteed by the United States of America.
- (4) Obligations of the State of North Carolina.
- (5) Bonds and notes of any North Carolina local government or public authority, subject to such restrictions as the Board of Funeral Service may impose.
- (6) Shares of or deposits in any savings and loan association organized under the laws of this State and shares of or deposits in any federal savings and loan association having its principal office in this State, provided that any such savings and loan association is insured by the United States of America or any agency thereof or by any mutual deposit guaranty association authorized by the Commissioner of Insurance of North Carolina to do business in North Carolina pursuant to Article 7A of Chapter 54 of the General Statutes.
- (7) Obligations of the Federal Intermediate Credit Banks, the Federal Home Loan Banks, Fannie Mae, the Banks for Cooperatives, and the Federal Land Banks, maturing no later than 18 months after the date of purchase.

Violation of the provisions of this section shall, after hearing, be cause for revocation or suspension of license to operate a mutual burial association. (1957, c. 820, s. 1; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, s. 5; 2001-487, s. 14(1); 2003-420, ss. 1, 17(b).)

§ 90-210.87. Unclaimed funds of defunct burial association.

All unclaimed funds of any burial association that is no longer in operation shall be disposed of in accordance with Chapter 116B. (1969, c. 1083; 1975, c. 837; 1979, 2nd Sess., c. 1311, s. 7; 1987, c. 864, s. 12; 2003-420, s. 17(b).)

§ 90-210.88. Penalty for failure to operate in substantial compliance with bylaws.

If any burial association or other organization or official thereof, or any person operates or allows to be operated a burial association on any plan, scheme or bylaws not in substantial compliance with the bylaws set forth in G.S. 90-210.81, the Board of Funeral Service may revoke any authority or license granted for the operation of such burial association, and any person, firm or corporation or association convicted of the violation of this section shall be guilty of a Class 1 misdemeanor. (1941, c. 130, s. 8; 1975, c. 837; 1987, c. 864, ss. 12, 16; 1993, c. 539, s. 1044; 1994, Ex. Sess., c. 24, s. 14(c); 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.89. Penalty for wrongfully inducing person to change membership.

Any burial association official, agent or representative thereof or any person who shall use fraud or make any promise not part of the printed bylaws, or who shall offer any rebate, gratuity or refund to cause a member of one association to change membership to another association,

shall be guilty of a Class 1 misdemeanor. (1941, c. 130, s. 9; 1975, c. 837; 1987, c. 864, s. 12; 1993, c. 539, s. 1045; 1994, Ex. Sess., c. 24, s. 14(c); 2003-420, s. 17(b).)

§ 90-210.90. Penalty for making false and fraudulent entries.

Any person or burial association official who makes or allows to be made any false entry on the books of the association with intent to deceive or defraud any member thereof, or with intent to conceal from the Board of Funeral Service or its deputy or agent, or any auditor authorized to examine the books of such association, under the supervision of the Board of Funeral Service, shall be guilty of a Class 1 misdemeanor. (1941, c. 130, s. 10; 1945, c. 125, s. 5; 1975, c. 837; 1987, c. 864, s. 12; 1993, c. 539, s. 1046; 1994, Ex. Sess., c. 24, s. 14(c); 1997-313, ss. 5, 6; 2003-420, ss. 1, 17(b).)

§ 90-210.91. Accepting applications without collecting fee and first assessment.

Any burial association official, agent or representative, or any other person who shall accept any application for membership in any association without collecting the membership fee and first assessment due thereon from any such person making such an application for membership, shall be guilty of a Class 1 misdemeanor.

Any burial association official, agent or representative, or any other person who shall accept an application for an additional benefit from a member of a burial association without collecting the additional membership fee and the additional assessment due thereon from any such person making such an application for an additional benefit shall be guilty of a Class 1 misdemeanor. (1941, c. 130, s. 11; 1975, c. 837; 1987, c. 864, s. 12; 1993, c. 539, s. 1047; 1994, Ex. Sess., c. 24, s. 14(c); 2003-420, s. 17(b).)

§ 90-210.92. Removal of secretary-treasurer for failure to maintain proper records.

Any burial association secretary-treasurer who fails to maintain records to the minimum standards required by the Board of Funeral Service shall be by such Board removed from office and another elected in his stead, such election to be immediate and by the board of directors of said burial association upon notice of such removal. (1941, c. 130, s. 12; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.93. Free services; failure to make proper assessments, etc., made a misdemeanor.

Any person or persons who offer free funeral services or free embalming, free ambulance service or any other thing free of charge, acting for any burial association, directly or indirectly, or who so acting shall in any way fail to assess for the amount needed to pay death losses and allowable expenses, shall be guilty of a Class 1 misdemeanor. (1941, c. 130, s. 13; 1967, c. 1197, s. 5; 1975, c. 837; 1987, c. 864, s. 12; 1993, c. 539, s. 1048; 1994, Ex. Sess., c. 24, s. 14(c); 2003-420, ss. 1, 17(b).)

§ 90-210.94. Right of appeal upon revocation or suspension of license.

Upon the revocation or suspension of any license or authority by the Board of Funeral Service, under any of the provisions of this Article, the said association or individual whose license or authority has been revoked or suspended shall have the right of appeal from the action of the Board of Funeral Service in revoking or suspending such license or authority to the Superior Court of Wake County or to the superior court of the county in which the said association or the said individual is domiciled or, upon agreement of the parties to the appeal, to

any other superior court of the State. The association or individual appealing from the order of the Board of Funeral Service shall give notice of appeal in writing to the Board of Funeral Service, with a copy of such notice to the clerk of the superior court to which the appeal is taken, within 10 days of the date of notice of the order revoking or suspending the said license or authority and shall pay such appeal fees to the clerk of superior court as are required by law. Within 30 days after receipt of the notice of appeal, the Board of Funeral Service shall file with the clerk of the superior court of the county in which the appeal is to be heard the decision of the Board of Funeral Service. Upon receipt of such decision, the clerk of superior court shall place the matter upon the civil issue docket of the superior court and the same shall be heard de novo. Pending such appeal, the burial association or individual whose license or authority has been suspended or revoked shall continue to operate or function as before the revocation or suspension and until final adjudication by the superior court. (1941, c. 130, s. 14; 1943, c. 272, s. 4; 1957, c. 820, s. 3; 1973, c. 108, s. 20; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.95. Bond of secretary or secretary-treasurer of burial associations.

The secretary or secretary-treasurer of each burial association shall, before entering upon the duties of his office, and for the faithful performance thereof, execute a bond payable to the Board of Funeral Service as trustee for the burial association in some bonding company licensed to do business in this State, to be approved by the Board of Funeral Service. Said bond shall be in an amount not less than one thousand dollars (\$1,000), nor more than ten thousand dollars (\$10,000), in the discretion of the Board, for those associations whose assets, as determined by the Board's audit, are ten thousand dollars (\$10,000) or less. For those associations whose assets, as determined by the Board's audit, are in excess of ten thousand dollars (\$10,000), said bond shall be in an amount of ten thousand dollars (\$10,000) plus twenty-five per centum (25%) of all assets over ten thousand dollars (\$10,000); provided, however, that the bond required by this section shall not in any event exceed fifty thousand dollars (\$50,000). If any association operates a branch or subsidiary and the officers of both associations are the same, for purposes of this section, it shall be treated as one association. Any burial association, with the consent of the Board of Funeral Service, may give a bond secured by a deed of trust on real estate situated in North Carolina, in lieu of procuring said bond from a bonding company. The bond thus given shall not be acceptable in excess of the ad valorem tax value for the current year of the real estate securing said bond. The deed of trust shall be recorded in the county or counties wherein the land lies and shall be deposited with the Board of Funeral Service, name the Board as trustee for the burial association and must constitute a first lien on the property secured by the deed of trust. Said deed of trust shall contain a description of the encumbered property by metes and bounds together with evidence by title insurance policy or by certificate of an attorney-at-law, certifying that said trustor is the owner of a marketable fee simple title to such lands. (1941, c. 130, s. 15; 1943, c. 272, s. 5; 1967, c. 985, s. 2; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.96. Assessments.

Every burial association now or hereinafter organized shall make 12 assessments, or their equivalent, per year per member. The Board of Funeral Service shall order any association to make more than 12 assessments per year when, after notice and hearing, it shall appear to the Board of Funeral Service that the death loss of any association so requires in order to protect the

interest of the members. (1943, c. 272, s. 6; 1969, c. 1041, s. 1; 1971, c. 650; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.97. Making false or fraudulent statement a misdemeanor.

Any officer or employee of any burial association authorized to do business under this Article, who shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for membership or for the purpose of obtaining money or any benefit from any burial association transacting business under this Article, or who shall make any false financial statement to the Board of Funeral Service or to the membership of the burial association of which such person is an officer or employee shall be guilty of a Class 1 misdemeanor. (1943, c. 272, s. 6; 1975, c. 837; 1987, c. 864, s. 12; 1993, c. 539, s. 1049; 1994, Ex. Sess., c. 24, s. 14(c); 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.98. Statewide organization of associations.

It shall be lawful for the several mutual burial associations of the State of North Carolina, in good standing, to organize and provide for a statewide organization of mutual burial associations, which organization shall be for the mutual and general suggestive control of mutual burial associations in the State of North Carolina. Such organization shall be known as the North Carolina Burial Association, Incorporated, and shall be composed of members who are lawfully operating burial associations in this State and who pay their dues to such association. (1941, c. 130, s. 16; 1975, c. 837; 1987, c. 864, s. 12; 2003-420, s. 17(b).)

§ 90-210.99. Article deemed exclusive authority for organization, etc., of mutual burial associations.

This Article shall be deemed and held exclusive authority for the organization and operation of mutual burial associations within the State of North Carolina, and such associations shall not be subject to any other laws respecting insurance companies of any class. (1941, c. 130, s. 17; 1975, c. 837; 1987, c. 864, s. 12; 2003-420, s. 17(b).)

§ 90-210.100. Operation of association in violation of law prohibited.

No person, firm or corporation shall operate as a burial association in this State unless incorporated under the laws of the State of North Carolina and unless such association shall be operated in compliance with all the provisions of this Article, and unless such association shall be licensed and approved by the Board of Funeral Service. (1941, c. 130, s. 18; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.101. Member of Armed Forces failing to pay assessments; reinstatement.

If a member of a burial association who is in the Armed Forces of the United States fails to pay any assessment, the member shall be in bad standing, and unless and until restored, shall not be entitled to benefits. However, the member shall be reinstated in the burial association upon application made by the member at any time until 12 months after the member's discharge from the Armed Forces of the United States, notwithstanding the member's physical condition and without the payment of assessments which have become due during the member's service in the Armed Forces of the United States. Benefits will be in force immediately after such reinstatement. (1943, c. 732, s. 2; 1975, c. 837; 1987, c. 864, s. 12; 2003-420, s. 17(b); 2011-183, s. 64.)

§ 90-210.102. Hearing by Board of dispute over liability for funeral benefits; appeal.

In case of a disagreement between the representative of a deceased member of any burial association and such deceased member's burial association a hearing may be held by the Board of Funeral Service, on request of either party, to determine whether the association is liable for the benefits set forth in the policy issued to the said deceased member of said burial association. The Board of Funeral Service shall render a decision which shall have the same force and effect as judgments rendered by courts of competent jurisdiction in North Carolina. Either party may appeal from the decision of the Board of Funeral Service. Appeal shall be to the district court division of the General Court of Justice in the county in which the burial association is located. The procedure for appeal shall be the same as the appeal procedure set forth in Article 19 of Chapter 7A of the General Statutes of North Carolina regulating appeals from the magistrate to the district court. (1947, c. 100, s. 5; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, s. 5; 2003-420, ss. 1, 17(b); 2007-531, s. 16.)

§ 90-210.103. Board authorized to subpoena witnesses, administer oaths and compel attendance at hearings.

For the purpose of holding hearings the Board of Funeral Service shall have power to subpoena witnesses, administer oaths, and compel attendance of witnesses and parties. (1957, c. 820, s. 2; 1975, c. 837; 1987, c. 864, s. 12; 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.104. Authority of Board to examine financial records.

The Board of Funeral Service shall have authority to examine all records relating to a burial association's financial condition wherever such records are located, including records maintained by any corporation, building and loan association, savings and loan association, credit union, or other legal entity organized and operating pursuant to the authority contained in Chapters 53 and 54 of the General Statutes. (1977, c. 748, s. 4; 1987, c. 864, s. 12; 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.105. Board authorized to freeze certain funds of Association.

Whenever in the opinion of the Board of Funeral Service it deems it necessary for the protection of the interest of members of a burial association, it shall have authority by written order to direct that the funds of any burial association on deposit in any institution organized and operating under Chapters 53 and 54 of the General Statutes be frozen and not paid out by such legal entity. Any legal entity freezing the funds of a burial association pursuant to the directive of the Board of Funeral Service shall not be liable to any burial association for freezing said account pursuant to the order of the Board. (1977, c. 748, s. 5; 1987, c. 864, s. 12; 1997-313, ss. 5, 6; 2003-420, ss. 1, 17(b).)

§ 90-210.106. Authority of foreign or domestic mutual burial association or domestic or foreign insurance company to purchase, merge or consolidate with North Carolina mutual burial associations.

(a) Any mutual burial association or insurance company operating pursuant to the laws of this State or any other state may purchase the assets of, merge, or consolidate with a North Carolina chartered mutual burial association in accordance with the laws of this State and any

rules promulgated by the Board of Funeral Service to protect the interest of members of mutual burial associations prior to the purchase, merger, or consolidation of the association.

(b) Notwithstanding any provision of Chapter 55 or Chapter 55A, any domestic or foreign insurance company which if organized in North Carolina would have to be organized under Chapter 55 may merge or consolidate with any domestic mutual burial association. When a domestic or foreign insurance company consolidates or merges with a domestic mutual burial association and sells insurance or burial benefits in excess of two hundred dollars (\$200.00), it shall be subject to all of the provisions of the insurance laws of North Carolina.

(c) If the assets and liabilities of a North Carolina mutual burial association are purchased, and no merger, consolidation or dissolution is effectuated in connection with the purchase, the management and administrative operations of the North Carolina mutual burial association shall be transferred to the purchasing entity.

(d) In any purchase, merger, or consolidation pursuant to this section, the membership of the mutual burial association shall be guaranteed coverage in the amounts held by each member at the time of such purchase, merger, or consolidation. During the life of the member, this coverage shall not exceed the annual rate charged by the mutual burial association that is being purchased, merged, or consolidated. An insurance company which purchases, merges with, or consolidates with a North Carolina mutual burial association shall establish and maintain life insurance reserves in accordance with the insurance laws of North Carolina for those burial insurance policies existing at the time of the purchase, merger, or consolidation. A North Carolina mutual burial association or foreign mutual burial association which purchases, merges with, or consolidates with a North Carolina mutual burial association shall establish and maintain burial insurance reserves in accordance with the burial insurance laws of North Carolina for those burial insurance policies existing at the time of the purchase, merger, or consolidation. (1981, c. 989, s. 5; 1983, c. 766; 1987, c. 864, s. 12; 1997-313, s. 5; 2003-420, ss. 1, 17(b).)

§ 90-210.107. Acquisition, merger, dissolution, and liquidation of mutual burial associations.

(a) Any insurance company which desires to purchase the assets of or to merge with a burial association as provided in G.S. 90-210.106 shall submit to the Board of Funeral Service and to the secretary of the association a written proposal containing the terms and conditions of the proposed purchase or merger. A proposal may be conditioned upon an increase in the assessments of an association in the manner set out in subsection (g) of this section. In such a case, the issues of purchase or merger and an increase in assessments may be considered at the same meeting of the association.

(b) Upon receipt of a written proposal:

- (1) The Board shall issue an order directing the association to hold a meeting of the membership within 30 days following receipt of the order for the purpose of voting on the proposal.
- (2) Within 10 days of receiving the order from the Board, the association shall give at least 10 days' written notice of the meeting to each of its members. The notice shall:
 - a. State the date, time, and place of the meeting.
 - b. State the purpose of the meeting.
 - c. Contain or have attached the proposal submitted by the insurance company.

- d. Contain a statement limiting the time that each member will be permitted to speak to the proposal, if the association deems it advisable.
- e. Contain a written proxy form and instructions concerning the proxy prescribed by the Board.

(c) A representative of the insurance company shall be permitted to attend the meeting held by the association for the purposes of explaining the proposal and answering any questions from the members. The officers of the association may present their views concerning the proposal. Any member of the association who wishes to speak to the proposal shall be permitted to do so subject to any time limitation stated in the notice of the meeting.

(d) The secretary of the association shall record the name of every member who is present at the meeting or has issued a written proxy pursuant to G.S. 55A-7-24 and shall determine whether there is a quorum. The presence of 15 members or ten percent (10%) of the membership, whichever is greater, shall constitute a quorum. Acceptance or rejection of the proposal shall be by majority vote of the members voting. Any member who is at least 18 years of age shall be permitted to vote. A parent or guardian of any member who is under 18 years of age may vote on behalf of his or her child or ward, but only one vote may be cast on behalf of that member.

(e) The secretary of the association shall certify the result of the vote and the presence of a quorum to the Board within five days following the meeting and shall include with the certification a copy of the notice of the meeting that was sent to the members of the association.

(f) The Board shall immediately review the certification, the notice, and any other records that may be necessary to determine the adequacy of notice, the presence of a quorum, and the validity of the vote. Upon determining that the meeting and vote were regular and held following proper notice and that a majority of a quorum of the members voted in favor of the proposal, the Board shall issue an order approving the purchase or merger and directing that the purchase or merger proceed in accordance with the proposal.

(g) Any burial association whose current assessments are not, or are unlikely to be within the next three years, adequate to reach or maintain a reserve of at least twenty-one dollars (\$21.00) per member or are inadequate to meet the requirements of a proposal from an insurance company to acquire the assets of or to merge with the association may increase its assessments by an amount necessary to reach and maintain the reserve or to meet the proposal. The increase shall be approved by a vote of the members of the association at a regular meeting of the association or at a special meeting called for the purpose of increasing assessments.

- (1) Any officer or director of the association may call a special meeting for the purpose of increasing assessments, and the secretary shall call a special meeting for such purpose upon the request of at least ten percent (10%) of the members or upon receipt of a proposal from an insurance company that is conditioned upon an increase in assessments.
- (2) Written notice setting out the date, time, place, and the purpose of the meeting shall be hand delivered or sent by first-class mail, postage prepaid, to the last known address of each member of the association at least 10 days in advance of the meeting.
- (3) No vote may be had on the question of an increase in assessments unless a quorum of the members of the association is present at the meeting. A quorum

shall be conclusively presumed if 15 members or ten percent (10%) of the membership of the association, whichever is greater, is present at the meeting.

- (4) The proposal to increase the assessments shall be approved by an affirmative vote of a majority of the members present and voting.
- (5) The secretary of the association within five days following the meeting shall certify the result of the vote and the presence of a quorum to the Board in the manner and for the purposes set out in subsections (e) and (f) of this section.

(h) Upon a written request from an association that has held a valid meeting and voted for voluntary dissolution in accordance with G.S. 90-210.81, the Board shall issue an order of liquidation for that association.

(i) Upon receipt of a request for voluntary dissolution under subsection (h) of this section or if the sponsoring funeral establishment has its permit revoked or ceases operation for any reason, the Board shall issue an order of liquidation. The Board's order may direct that the agreements for members' benefits be transferred to a financially sound mutual burial association, as well as all records, property, and unexpended balances of funds of the association to be liquidated, if the financially sound mutual burial association agrees in writing to accept the transfer. The Board's order shall direct the burial association to complete the liquidation and to file a final report with the Board no later than December 31 of the year of the liquidation. Upon receipt of the order of liquidation, the burial association shall:

- (1) Cease accepting new members.
- (2) Collect all debts owed to the association and pay all debts owed by the association from monies on hand, including the reserve.
- (3) Distribute pro rata any remaining monies on hand and in the reserve among those who were members of the association and whose transfer could not be accomplished on the date that the liquidation order was issued by the Board. Each member's distributive share shall be determined by dividing the amount of the member's benefit by the aggregate benefits of all members of the association and then multiplying the total amount of money available for distribution by the percentage so derived. Assessments owed by the members to the association at the time of distribution shall be taken into account and shall be offset against the members' distributive shares.
- (4) Issue a certificate to members in an amount that equals the difference between the distributive share issued in subdivision (3) of this subsection and the full amount of the member's association benefit. Any certificate issued shall supersede and supplant any other certificate already issued by the association. The certificate shall be on a form prescribed by the Board and shall be prepared and distributed by the association at its expense.
- (5) File a final report with the Board on or before December 31 in the year in which the order of liquidation was issued. This report shall show all receipts and disbursements, including the amount distributed to each member, since the last annual report of the association was filed with the Board.

(j) A certificate issued under subsection (i) of this section may be used as a credit toward the cost of funeral services, facilities, and merchandise at any funeral establishment that agrees on forms prescribed by the Board to accept such certificates. A funeral establishment that agrees to accept certificates shall do so until the agreement with the Board expires. The Board shall maintain and distribute to the public a list of funeral establishments that will accept certificates.

(k) Upon receipt of the final report of dissolution by the association, which is required by subsection (i) of this section, the Board shall immediately review the final report and shall notify the association whether the report is complete and has been accepted. Upon acceptance of the final report by the Board, all licenses issued to soliciting agents of the association pursuant to G.S. 90-210.84 are automatically cancelled. (1999-425, s. 3; 2003-420, ss. 1, 17(b); 2007-531, s. 17.)

§§ 90-210.108 through 90-210.119: Reserved for future codification purposes.

Article 13F.

Cremations.

§ 90-210.120. Short title.

This Article shall be known and may be cited as the North Carolina Crematory Act. (1989 (Reg. Sess., 1990), c. 988, s. 1; 2003-420, s. 2.)

§ 90-210.121. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) "Authorizing agent" means a person legally entitled to authorize the cremation of human remains in accordance with G.S. 90-210.124.
- (2) "Board" means the North Carolina Board of Funeral Service.
- (3) "Body parts" means 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 thereof that have been donated to science for medical purposes.
- (4) "Casket" means a rigid container that is designed for the encasement of human remains and that is usually constructed of wood, metal, or other material and ornamented and lined with fabric, and which may or may not be combustible.
- (5) "Certificate of cremation" means a certificate provided by the crematory manager who performed the cremation containing, at a minimum, the following information:
 - a. Name of decedent;
 - b. Date of cremation;
 - c. Name and address of crematory; and
 - d. Signature of crematory manager or person acting as crematory manager.
- (6) "Cremated remains" means all human remains recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions.
- (7) "Cremation" means the technical process, using intense heat and flame, that reduces human remains to bone fragments. Cremation includes the processing and may include the pulverization of the bone fragments.
- (8) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers covered by this Article shall be used exclusively for the cremation of human remains.
- (9) "Cremation container" means the container in which the human remains are transported to the crematory or placed therein upon arrival for storage and placement in a cremation chamber for cremation. A cremation container shall comply with all of the following standards:
 - a. Be composed of readily combustible materials suitable for cremation;
 - b. Be able to be closed in order to provide a complete covering for the human remains;
 - c. Be resistant to leakage or spillage;
 - d. Be rigid enough for handling with ease;
 - e. Be able to provide protection for the health, safety, and personal integrity of crematory personnel; and

- f. Be easily identifiable. The covering of the cremation container shall contain the following information:
 - 1. The name of the decedent;
 - 2. The date of death;
 - 3. The sex of the decedent; and
 - 4. The age at death of the decedent.
- (10) "Cremation interment container" means a rigid outer container composed of concrete, steel, fiberglass, or some similar material in which an urn is placed prior to being interred in the ground and which is designed to withstand prolonged exposure to the elements and to support the earth above the urn.
- (11) "Crematory" or "crematorium" means the building or buildings or portion of a building on a single site that houses the cremation equipment, the holding and processing facilities, the business office, and other parts of the crematory business. A crematory must comply with all applicable public health and environmental laws and rules and must contain the equipment and meet all of the standards established by the rules adopted by the Board.
- (12) "Crematory licensee" means the individual or legal entity that is licensed by the Board to operate a crematory and perform cremations.
- (13) "Crematory manager" means the person who is responsible for the management and operation of the crematory. A crematory manager must either be licensed to practice funeral directing or funeral service and be qualified as a crematory technician or must obtain a crematory manager permit issued by the Board. In order to receive a crematory manager permit, a person must:
 - a. Be at least 18 years of age.
 - b. Be of good moral character.
 - c. Be qualified as a crematory technician.

Notwithstanding any other provision of law, a crematory that is licensed by the Board prior to January 1, 2004, and as of that date is not managed by a crematory manager who is licensed to practice funeral directing or funeral service, or who has a crematory manager permit, may continue to be managed by a crematory manager who is not licensed to practice funeral directing or funeral service or who does not have a crematory manager permit so long as there is no sale, transfer, devise, gift, or any other disposal of a controlling interest in the crematory.
- (13a) "Cremation society" means any person, firm, corporation, or organization that is affiliated with a crematory licensed under this Article and provides cremation information to consumers.
- (14) "Crematory technician" means any employee of a crematory licensee who has a certificate confirming that the crematory technician has attended a training course approved by the Board. The Board shall recognize the cremation certificate program that is conducted by the Cremation Association of North America (CANA).
- (15) "Final disposition" means the cremation and the ultimate interment, entombment, inurnment, or scattering of the cremated remains or the return of the cremated remains by the crematory licensee to the authorizing agent or

such agent's designee as provided in this Article. Upon the written direction of the authorizing agent, cremated remains may take various forms.

- (16) "Holding and processing facility" means an area or areas that are designated for the retention of human remains prior to, and the retention and processing of cremated remains after, cremation; that comply with all applicable public health and environmental laws; preserve the health and safety of the crematory technician and other personnel of the crematory; and that are secure from access by anyone other than authorized persons. A holding facility and processing facility must be located in a crematory.
- (17) "Human remains" means the body of a deceased person, including a separate human fetus, regardless of the length of gestation, or body parts.
- (17a) "Initial container" means a receptacle for cremated remains, for which the intended use and design is to hold cremated remains, usually composed of cardboard, plastic, or similar material that can be closed in a manner so as to prevent the leakage or spillage of the cremated remains or the entrance of foreign material and is a single container of sufficient size to hold the cremated remains.
- (18) "Niche" means a compartment or cubicle for the memorialization or final disposition of an urn or container containing cremated remains.
- (19) "Processing" means the removal of bone fragments from the cremation chamber for the reduction in size, labeling and packaging, and placing in an urn or initial container.
- (20) "Pulverization" means the reduction of identifiable or unidentifiable bone fragments after the completion of the cremation to granulated particles by mechanical means.
- (21) "Scattering area" means an area permitted by North Carolina law including, but not limited to, an area designated by a cemetery and located on dedicated cemetery property where cremated remains that have been removed from their container can be mixed with or placed on top of the soil or ground cover.
- (22) Repealed by Session Laws 2007-531, s. 18, effective August 31, 2007.
- (23) "Urn" means a receptacle designed to permanently encase the cremated remains. (1989 (Reg. Sess., 1990), c. 988, s. 1; 1997-399, s. 16; 2003-420, s. 2; 2007-531, s. 18; 2011-284, s. 64.)

§ 90-210.122. Crematory Authority established.

(a) The North Carolina Crematory Authority is established as a Committee within the Board. The Crematory Authority shall suggest rules to the Board for the carrying out and enforcement of the provisions of this Article.

(b) The Crematory Authority shall initially consist of five members appointed by the Governor and two members of the Board appointed by the Board. The Governor may consider a list of recommendations from the Cremation Association of North Carolina.

(c) The initial terms of the members of the Crematory Authority shall be staggered by the appointing authorities so that the terms of three members (two of which shall be appointees of the Governor) expire December 31, 1991, the terms of two members (both of which shall be appointees of the Governor) expire December 31, 1992, and the terms of the remaining two members (one of which shall be an appointee of the Governor) expire December 31, 1993.

As the terms of the members appointed by the Governor expire, their successors shall be elected from among a list of nominees in an election conducted by the Board in which all licensed crematory operators are eligible to vote. The Board shall conduct the election for members of the Crematory Authority and shall prescribe the procedures and establish the time and date for nominations and elections to the Crematory Authority. A nominee who receives a majority of the votes cast shall be declared elected. The Board shall appoint the successors to the two positions for which it makes initial appointments pursuant to this section.

The terms of the elected members of the Crematory Authority shall be three years. The terms of the members appointed by the Board, including the members initially appointed pursuant to this subsection, shall be coterminous with their terms on the Board. Any vacancy occurring in an elective seat shall be filled for the unexpired term by majority vote of the remaining members of the Crematory Authority. Any vacancy occurring in a seat appointed by the Governor shall be filled by the Governor. Any vacancy occurring in a seat appointed by the Board shall be filled by the Board.

(d) The members of the Crematory Authority shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 93B-5 for all time actually spent upon the business of the Crematory Authority. All expenses, salaries and per diem provided for in this Article shall be paid from funds received and shall in no manner be an expense to the State.

(e) The Crematory Authority shall select from its members a chairman, a vice chairman and a secretary who shall serve for one year or until their successors are elected and qualified. No two offices may be held by the same person. The Crematory Authority, with the concurrence of the Board, shall have the authority to engage adequate staff as deemed necessary to perform its duties.

(f) The Crematory Authority shall hold at least one meeting in each year. In addition, the Crematory Authority may meet as often as the proper and efficient discharge of its duties shall require. Four members shall constitute a quorum. (1989 (Reg. Sess., 1990), c. 988, s. 1; 2003-420, s. 2; 2007-531, s. 19.)

§ 90-210.123. Licensing and inspection.

(a) Any person doing business in this State, or any cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization, or any other entity may erect, maintain, and operate a crematory in this State and may provide the necessary employees, facilities, structure, and equipment for the cremation of human remains, provided that the person or entity has secured a license as a crematory licensee in accordance with this Article.

(b) A crematory may be constructed on or adjacent to any cemetery, on or adjacent to any funeral establishment that is zoned commercial or industrial, or at any other location consistent with local zoning and environmental regulations.

(c) Application for a license as a crematory licensee shall be made on forms furnished and prescribed by the Board. The Board shall inspect the premises, facilities, structure, and equipment to be used as a crematory, confirm that the crematory manager's and crematory technician's educational certificate is valid, and issue a renewable license to the crematory licensee if the applicant meets all the requirements and standards of the Board and the requirements of this Article.

(d) Every application for licensure shall identify the crematory manager and all crematory technicians employed by the crematory licensee providing that nothing in this Article

shall prohibit the designation and identification by the crematory licensee of one individual to serve as a crematory manager and crematory technician. Each crematory licensed in North Carolina shall employ on a full-time basis at least one crematory technician. Every application for licensure and renewal thereof shall include all crematory technicians' educational certificates. The crematory licensee shall keep the Board informed at all times of the names and addresses of the crematory manager and all crematory technicians. In the event a licensee is in the process of replacing its only crematory technician at the time of license renewal, the licensee may continue to operate the crematory for a reasonable time period not to exceed 180 days.

(e) All licenses and permits shall expire on the last day of December of each year. A license or permit may be renewed without paying a late fee on or before the first day of February immediately following expiration. After that date, a license or permit may be renewed by paying a late fee as provided in G.S. 90-210.132 in addition to the annual renewal fee. Licenses and permits that remain expired six months or more require a new application for renewal. Licenses and permits are not transferable. A new application for a license or permit shall be made to the Board within 30 days following a change of ownership of more than fifty percent (50%) of the business.

(f) No person, cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization, or any other entity shall cremate any human remains, except in a crematory licensed for this express purpose and operated by a crematory licensee subject to the restrictions and limitations of this Article or unless otherwise permitted by statute.

(g) Whenever the Board finds that an owner, partner, crematory manager, member, officer, or any crematory technician of a crematory licensee or any applicant to become a crematory licensee, or that any authorized employee, agent, or representative has violated any provision of this Article, or is guilty of any of the following acts, and when the Board also finds that the crematory operator or applicant has thereby become unfit to practice, the Board may suspend, revoke, or refuse to issue or renew the license, in accordance with Chapter 150B of the General Statutes:

- (1) Conviction of a felony or a crime involving fraud or moral turpitude.
- (1a) Denial, suspension, or revocation of an occupational or business license by another jurisdiction.
- (2) Fraud or misrepresentation in obtaining or renewing a license or in the practice of cremation.
- (3) False or misleading advertising.
- (4) Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this subdivision shall not be construed to prohibit general advertising by the licensee.
- (5) Employment directly or indirectly of any agent, assistant, or other person on a part-time or full-time basis or on commission for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular licensee.
- (6) The direct or indirect payment or offer of payment of a commission by the licensee or the licensee's agent, assistant, or employees for the purpose of securing business.
- (7) Gross immorality, including being under the influence of alcohol or drugs while performing cremation services.

- (8) Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material published or caused to be published by the licensee.
- (9) Failing to treat a dead human body with respect at all times.
- (10) Violating or cooperating with others to violate any of the provisions of this Article or of the rules of the Board.
- (11) Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of dead human bodies.
- (12) Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully entitled to the custody thereof, except as provided in G.S. 90-210.131(e).
- (13) Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.
- (14) Practicing funeral directing, embalming, or funeral service without a license.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than five thousand dollars (\$5,000).

(h) Where the Board finds a licensee is guilty of one or more of the acts or omissions listed in subsection (g) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter 150B of the General Statutes. In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars (\$5,000) in conjunction with the probation.

(i) The Board may hold hearings in accordance with the provisions of this Article and Chapter 150B of the General Statutes. The Board shall conduct any such hearing. The Board shall constitute an "agency" under Article 3A of Chapter 150B of the General Statutes with respect to proceedings initiated pursuant to this Article. The Board is empowered to regulate and inspect crematories and crematory licensees and to enforce as provided by law the provisions of this Article and the rules adopted hereunder. Any crematory that, upon inspection, is found not to meet any of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain whether the deficiency or other violation has been corrected. The Board may obtain preliminary and final injunctions whenever a violation of this Article has occurred or threatens to occur.

In addition to the powers enumerated in Chapter 150B of the General Statutes, the Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation, or proceeding conducted by it. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas, and other papers given to them by the President of the Board for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor. (1989 (Reg. Sess., 1990), c. 988, s. 1; 1993, c. 539, s. 639; 1997-399, s. 17; 2003-420, s. 2; 2007-531, ss. 20, 21.)

§ 90-210.124. Authorizing agent.

(a) The following person, in the priority list below, shall have the right to serve as an "authorizing agent":

- (1) An individual at least 18 years of age may authorize the type, place, and method of disposition of the individual's own dead body by methods provided under G.S. 130A-420(a). An individual may delegate his or her right to dispose of his or her own body to any person by one of the methods provided under G.S. 130A-420(a1).

When an individual has authorized his or her own cremation and disposition in accordance with this subsection, the individual or institution designated by that individual shall act as the authorizing agent for that individual.

- (2) If a decedent has left no written authorization for the cremation and disposition of the decedent's body as permitted under subdivision (1) of this subsection, the following competent persons in the order listed may authorize the type, method, place, cremation, and disposition of the decedent's body:
 - a. The surviving spouse.
 - b. A majority of the surviving children who are at least 18 years of age and can be located after reasonable efforts.
 - c. The surviving parents.
 - d. A majority of the surviving siblings who are at least 18 years of age and can be located after reasonable efforts.
 - e. A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate who are at least 18 years of age and can be located after reasonable efforts.
 - f. A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the cremation and disposition.
 - g. In the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the decedent may serve as the authorizing agent.
 - h. In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or private institution and in which the institution is charged with making arrangements for the final disposition of the decedent, a representative of such institution may serve as the authorizing agent in the absence of any of the above.
 - i. In the absence of any of the above, any person willing to assume responsibility as authorizing agent, as specified in this act.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to cause or prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63 or permit modification of preneed contracts under G.S. 90-210.63A. If a person under this subsection is incompetent at the time of the decedent's death, the person shall be treated as if he or she predeceased the decedent. An attending physician may certify the incompetence of a person and the certification shall apply to the rights under this subsection only. Any person under this subsection may waive his or her

rights under this subsection by any written statement notarized by a notary public or signed by two witnesses.

(b) A person who does not exercise his or her right to dispose of the decedent's body under subdivision (a)(2) of this section within five days of notification or 10 days from date of death, whichever is earlier, shall be deemed to have waived his or her right to authorize disposition of the decedent's body or to contest disposition in accordance with this section.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the cremation and disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the cremation and disposition, a person listed in subdivision (a)(2) of this section may authorize the cremation and disposition as if the individual were deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3A of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes. (2003-420, s. 2; 2007-531, s. 22; 2008-153, s. 5; 2010-191, s. 2.)

§ 90-210.125. Authorization to cremate.

(a) A crematory licensee shall not cremate human remains until it has received a cremation authorization form signed by an authorizing agent. The cremation authorization form shall be prescribed by the Board and shall contain at a minimum the following information:

- (1) The identity of the human remains and confirmation that the human remains are in fact the individual so named.
- (2) The time and date of death of the decedent.
- (3) The name and address of the funeral establishment and/or the funeral director that obtained the cremation authorization.
- (4) The name and address of the crematory to be in receipt of the human remains for the purpose of cremation.
- (5) The name and address of the authorizing agent, the relationship between the authorizing agent and the decedent, and the date and time of signature of the authorizing agent.
- (6) A representation that the authorizing agent does in fact have the right to authorize the cremation of the decedent and that the authorizing agent is not aware of any living person who has a superior priority right to that of the authorizing agent, as set forth in G.S. 90-210.124. Or, in the event that there is another living person who does have a superior priority right to that of the authorizing agent, a representation that the authorizing agent has made all reasonable efforts to contact such person, has been unable to do so, and has no reason to believe that such person would object to the cremation of the decedent.
- (7) A representation that the authorizing agent has either disclosed the location of all living persons with an equal right to that of the authorizing agent, as set forth in G.S. 90-210.124, or does not know the location of any other living person with an equal right to that of the authorizing agent.
- (8) Authorization for the crematory to cremate the human remains, including authorization to process or pulverize the cremated remains.

- (9) A representation that the human remains do not contain a pacemaker or any other material or implant that may be potentially hazardous to the person performing the cremation.
- (10) The name of the person authorized to receive the cremated remains from the crematory licensee.
- (11) The manner in which final disposition of the cremated remains is to take place, if known. If the cremation authorization form does not specify final disposition in a grave, crypt, niche, or scattering area, then the form shall indicate that the cremated remains will be held by the crematory licensee for 30 days before they are disposed of, unless they are received from the crematory licensee prior to that time, in person, by the authorizing agent or his designee.
- (12) The signature of the authorizing agent attesting to the accuracy of all representations contained on the cremation authorization form, except as set forth in subsection (b) of this section.
- (13) If a cremation authorization form is being executed on a preneed basis, the cremation authorization form shall contain the disclosure required by G.S. 90-210.126. The authorizing agent may specify in writing religious practices that conflict with Article 13 of this Chapter. The crematory licensee and funeral director shall observe those religious practices except where they interfere with cremation in a licensed crematory as specified under G.S. 90-210.123 or the required documentation and record keeping.
- (14) A licensed funeral director of the funeral establishment or crematory licensee that received the cremation authorization form shall also sign the cremation authorization form. Such individual shall not be responsible for any of the representations made by the authorizing agent, unless such individual has actual knowledge to the contrary, except for the information requested by subdivisions (a)(1), (2), (3), (4), and (9) of this section, which shall be considered to be representations of the individual. In addition, the funeral director shall warrant to the crematory that the human remains delivered to the crematory licensee are the human remains identified on the cremation authorization form with any other documentation required by this State, any county, or any municipality.

(b) An authorizing agent who signs a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth on the cremation authorization form, including that person's authority to order the cremation, except for the information required by subdivisions (a)(4) and (9) of this section, unless the authorizing agent has actual knowledge to the contrary. An authorizing agent signing a cremation authorization form shall be personally and individually liable for all damages occasioned thereby and resulting therefrom.

(c) A crematory licensee shall have the legal right to cremate human remains upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability for a crematory licensee that cremates human remains pursuant to such authorization, or that releases or disposes of the cremated remains pursuant to such authorization, except for such crematory licensee's gross negligence, provided that the crematory licensee performs such functions in compliance with the provisions of this Article. There shall be no liability for a funeral establishment or licensee thereof that causes a crematory licensee to cremate human

remains pursuant to such authorization, except for gross negligence, provided that the funeral establishment and licensee thereof and crematory licensee perform their respective functions in compliance with the provisions of this section.

(d) After the authorizing agent has executed a cremation authorization form and prior to the commencement of the cremation, the authorizing agent may revoke the authorization and instruct the crematory licensee to cancel the cremation and to release or deliver the human remains to another crematory licensee or funeral establishment. Such instructions shall be provided to the crematory licensee in writing. A crematory licensee shall honor any instructions given to it by an authorizing agent under this section, provided that it receives such instructions prior to commencement of the cremation of the human remains. (2003-420, s. 2.)

§ 90-210.126. Preneed cremation arrangements.

(a) Any person, on a preneed basis, may authorize the person's own cremation and the final disposition of the person's cremated remains by executing, as the authorizing agent, a cremation authorization form on a preneed basis and having the form signed by two witnesses. The person shall retain a copy of this form, and a copy shall be sent to the funeral establishment and/or the crematory licensee. Any person shall have the right to transfer or cancel this authorization at any time prior to the person's death by destroying the executed cremation authorization form and providing written notice to the party or parties that received the cremation authorization form.

(b) Any cremation authorization form executed by an individual as the individual's own authorizing agent on a preneed basis shall contain the following disclosure, which shall be completed by the authorizing agent:

/ / I do not wish to allow any of my survivors the option of canceling my cremation and selecting alternative arrangements, regardless of whether my survivors deem such a change to be appropriate.

/ / I wish to allow only the survivors whom I have designated below the option of canceling my cremation and selecting alternative arrangements or continuing to honor my wishes for cremation and purchasing services and merchandise if they deem such a change to be appropriate.

(c) Except as provided in subsection (b) of this section, at the time of the death of a person who has executed, as the authorizing agent, a cremation authorization form on a preneed basis, any person in possession of the executed form, and any person charged with making arrangements for the disposition of the decedent's human remains who has knowledge of the existence of the executed form, shall use the person's best efforts to ensure that the decedent's human remains are cremated and that the final disposition of the cremated remains is in accordance with the instructions contained on the cremation authorization form.

(d) If a crematory licensee is in possession of a completed cremation authorization form, executed on a preneed basis, and the crematory licensee is in possession of the designated human remains, then the crematory licensee shall be required to cremate the human remains and dispose of the human remains according to the instructions contained on the cremation authorization form. A crematory licensee that complies with the preneed cremation authorization form under these circumstances may do so without any liability. A funeral establishment or licensee thereof that causes a crematory licensee to act in accordance with the preneed cremation authorization form under these circumstances may do so without any liability.

(e) Any preneed contract sold by, or preneed arrangements made with, a funeral establishment that includes a cremation shall specify the final disposition of the cremated remains, pursuant to G.S. 90-210.130. In the event that no different or inconsistent instructions are provided to the crematory licensee by the authorizing agent at the time of death, the crematory licensee shall be authorized to release or dispose of the cremated remains as indicated in the preneed agreement. Upon compliance with the terms of the preneed agreement, the crematory licensee, and any funeral establishment or licensee thereof who caused the crematory licensee to act in compliance with the terms of the preneed agreement, shall be discharged from any legal obligation concerning such cremated remains.

(f) The provisions of this section shall not apply to any cremation authorization form or preneed contract executed prior to the effective date of this act. Any funeral establishment, however, with the written approval of the authorizing agent or person who executed the preneed contract, may designate that such cremation authorization form or preneed contract shall be subject to this act. (2003-420, s. 2.)

§ 90-210.127. Record keeping.

(a) The crematory licensee shall furnish to the person who delivers such human remains to the crematory licensee a receipt, signed by both the crematory licensee and the person who delivers the human remains, showing the date and time of the delivery; the type of casket or cremation container that was delivered; the name of the person from whom the human remains were received and the name of the funeral establishment or other entity with whom such person is affiliated; the name of the person who received the human remains on behalf of the crematory licensee; and the name of the decedent. The crematory licensee shall retain a copy of this receipt in its permanent records for three years.

(b) Upon its release of cremated remains, the crematory licensee shall furnish to the person who receives such cremated remains from the crematory licensee a receipt, signed by both the crematory licensee and the person who receives the cremated remains, showing the date and time of the release; the name of the person to whom the cremated remains were released and the name of the funeral establishment, cemetery, or other entity with whom such person is affiliated; the name of the person who released the cremated remains on behalf of the crematory licensee; and the name of the decedent. The crematory shall retain a copy of this receipt in its permanent records for three years.

(c) A crematory licensee shall maintain at its place of business a record of all forms required by the Board of each cremation that took place at its facility for three years.

(d) The crematory licensee shall maintain a record for three years of all cremated remains disposed of by the crematory licensee in accordance with G.S. 90-210.126(d).

(e) Upon completion of the cremation, the crematory licensee shall issue a certificate of cremation.

(f) All records that are required to be maintained under this Article shall be subject to inspection by the Board or its agents upon request. (1989 (Reg. Sess., 1990), c. 988, s. 1; 1997-399, s. 18; 2003-420, s. 2.)

§ 90-210.128. Cremation containers.

(a) No crematory licensee shall make or enforce any rules requiring that any human remains be placed in a casket before cremation or that human remains be cremated in a casket,

nor shall any crematory licensee refuse to accept human remains for cremation for the reason that they are not in a casket.

(b) No crematory licensee shall make or enforce any rules requiring that any cremated remains be placed in an urn or receptacle designed to permanently encase the cremated remains after the cremation process has been performed. (2003-420, s. 2.)

§ 90-210.129. Cremation procedures.

(a) In deaths certified by the attending physician, the body shall not be cremated before the crematory licensee receives a death certificate signed by the attending physician, which shall contain at a minimum the following information:

- (1) Decedent's name;
- (2) Date of death;
- (3) Date of birth;
- (4) Sex;
- (5) Place of death;
- (6) Facility name (if not institution, give street and number);
- (7) County of death;
- (8) City of death; and
- (9) Time of death (if known).

(b) When required by G.S. 130A-388 and the rules adopted pursuant to that section or by successor statute and the rules pursuant to it, a cremation authorization form signed by a medical examiner shall be received by the crematory prior to cremation.

(c) In deaths coming under full investigation by the Office of the Chief Medical Examiner, a burial-transit permit/cremation authorization form must be received by the crematory before cremation.

(d) No body shall knowingly be cremated with a pacemaker or defibrillator or other potentially hazardous implant or condition in place. The authorizing agent for the cremation of the human remains shall be responsible for taking all necessary steps to ensure that any pacemaker or defibrillator or other potentially hazardous implant or condition is removed or corrected prior to cremation. If an authorizing agent informs the funeral director and the crematory licensee on the cremation authorization form of the presence of a pacemaker or defibrillator or other potentially hazardous implant or condition in the human remains, then the funeral director shall be responsible for ensuring that all necessary steps have been taken to remove the pacemaker or defibrillator or other potentially hazardous implant or to correct the hazardous condition before delivering the human remains to the crematory.

(e) Human remains shall not be cremated within 24 hours after the time of death, unless such death was a result of an infectious, contagious, or communicable and dangerous disease as listed by the Commission for Public Health, pursuant to G.S. 130A-134, and unless such time requirement is waived in writing by the medical examiner, county health director, or attending physician where the death occurred.

(f) No unauthorized person shall be permitted in view of the cremation chamber or in the holding and processing facility while any human remains are being removed from the cremation container, processed, or pulverized. Relatives of the deceased and their invitees, the authorizing agent and the agent's invitees, medical examiners, Inspectors of the North Carolina Board of Funeral Service, and law enforcement officers in the execution of their duties shall be authorized

to have access to the crematory area, subject to the rules adopted by the crematory licensee governing the safety of such individuals.

(g) Human remains shall be cremated only while enclosed in a cremation container. Upon completion of the cremation, and insofar as is possible, all of the recoverable residue of the cremation process shall be removed from the cremation chamber. Insofar as is possible, all residue of the cremation process shall then be separated from any foreign residue or anything else other than bone fragments and then be processed by pulverization so as to reduce the cremated remains to unidentifiable particles. Any foreign residue and anything other than the particles of the cremated remains shall be removed from the cremated remains as far as possible and shall be disposed of by the crematory licensee. This section does not apply where law otherwise provides for commingling of human remains. The fact that there is incidental and unavoidable residue in the cremation chamber used in a prior cremation is not a violation of this subsection.

(h) The simultaneous cremation of the human remains of more than one person within the same cremation chamber is forbidden.

(i) Every crematory shall have a holding and processing facility, within the crematory, designated for the retention of human remains prior to cremation. The holding and processing facility must comply with any applicable public health laws and rules and must meet all of the standards established pursuant to rules adopted by the Board.

(j) Crematory licensees shall comply with standards established by the Board for the processing and pulverization of human remains by cremation.

(k) Nothing in this Article shall require a crematory licensee to perform a cremation that is impossible or impractical to perform.

(l) The cremated remains with proper identification shall be placed in an initial container or the urn selected or provided by the authorizing agent. The initial container or urn contents shall not be contaminated with any other object, unless specific authorization has been received from the authorizing agent or as provided in subsection (g) of this section.

(m) If the cremated remains are greater than the dimensions of an initial container or urn, the excess cremated remains shall be returned to the authorizing agent or its representative in a separate container or urn.

(n) If the cremated remains are to be shipped, the initial container or urn shall be packed securely in a suitable shipping container that complies with the requirements of the shipper. Cremated remains shall be shipped only by a method which has an internal tracing system available and which provides a receipt signed by the person accepting delivery, unless otherwise authorized in writing by the authorizing agent. Cremated remains shall be shipped to the proper address as stated on the cremation authorization form signed by the authorizing agent.

(o) Unless the provisions of G.S. 130A-114 apply, before cremation the crematory licensee shall receive a written statement, on a form prescribed by the Board and signed by the attending physician, acknowledging the circumstances, date, and time of the delivery of the fetal remains from the mother. If after reasonable efforts no physician can be identified with knowledge and information sufficient to complete the written statement required by this subsection, the crematory licensee shall obtain documentation of the circumstances, date, and time of delivery of the fetal remains prepared by a hospital, medical facility, law enforcement agency, or other entity. Notwithstanding any other provision of law, health care providers may release to a licensee, in accordance with the federal Standards for Privacy of Individually Identifiable Health Information under the Health Insurance Portability and Accountability Act of

1996 (HIPAA), medical records that document the circumstances, date, and time of delivery of fetal remains. If the crematory licensee cannot identify documents sufficient to meet the requirements of this subsection, the licensee shall report to the local medical examiner pursuant to G.S. 130A-383(a).

(p) If the provisions of Article 4 of Chapter 130A of the General Statutes apply, the crematory licensee shall receive a fetal report of death as prescribed in G.S. 130A-114.

(q) Before the cremation of amputated body parts, the crematory licensee shall receive a written statement, on a form prescribed by the Board and signed by the attending physician, acknowledging the circumstances of the amputation. If after reasonable efforts no physician can be identified with knowledge and information sufficient to complete the written statement required by this subsection, the crematory licensee shall notify the local medical examiner pursuant to G.S. 130A-383(b). This section does not apply to the disposition of body parts cremated pursuant to Part 3A of Article 16 of Chapter 130A of the General Statutes. (1989 (Reg. Sess., 1990), c. 988, s. 1; 1997-399, s. 19; 2003-420, s. 2; 2007-182, s. 1.2; 2007-531, s. 23; 2008-153, s. 6.)

§ 90-210.130. Final disposition of cremated remains.

(a) The authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of the cremated remains, if known. The crematory licensee may store or retain cremated remains as directed by the authorizing agent. Records of retention and disposition of cremated remains shall be kept by the crematory licensee pursuant to G.S. 90-210.127.

(b) The authorizing agent is responsible for the disposition of the cremated remains. If, after a period of 30 days from the date of cremation, the authorizing agent or the agent's representative has not specified the final disposition or claimed the cremated remains, the crematory licensee or the person in possession of the cremated remains may release the cremated remains to another family member upon written notification to the authorizing agent delivered by certified mail or dispose of the cremated remains only in a manner permitted in this section. The authorizing agent shall be responsible for reimbursing the crematory licensee for all reasonable expenses incurred in disposing of the cremated remains pursuant to this section. A record of such disposition shall be made and kept by the person making the disposition. Upon disposing of cremated remains in accordance with this section, the crematory licensee or person in possession of the cremated remains shall be discharged from any legal obligation or liability concerning such cremated remains.

(c) In addition to the disposal of cremated remains in a crypt, niche, grave, or scattering garden located in a dedicated cemetery, or by scattering over uninhabited public land, the sea, or other public waterways pursuant to subsection (f) of this section, cremated remains may be disposed of in any manner on the private property of a consenting owner, upon direction of the authorizing agent. If cremated remains are to be disposed of by the crematory licensee on private property, other than dedicated cemetery property, the authorizing agent shall provide the crematory licensee with the written consent of the property owner.

- (d) Except with the express written permission of the authorizing agent, no person may:
- (1) Dispose of or scatter cremated remains in such a manner or in such a location that the cremated remains are commingled with those of another person. This subdivision shall not apply to the scattering of cremated remains at sea or by air from individual closed containers or to the scattering of cremated remains

in an area located in a dedicated cemetery and used exclusively for such purposes.

- (2) Place cremated remains of more than one person in the same closed container. This subdivision shall not apply to placing the cremated remains of members of the same family in a common closed container designed for the cremated remains of more than one person with the written consent of the family.

(e) Cremated remains shall be released by the crematory licensee to the individual specified by the authorizing agent on the cremation authorization form. The representative of the crematory licensee and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased, and the date, time, and place of the receipt, and contain a representation that the handling of the final disposition will be in a proper manner. After this delivery, the cremated remains may be transported in any manner in this State, without a permit, and disposed of in accordance with the provisions of this Article.

(f) Cremated remains may be scattered over uninhabited public land, over a public waterway or sea, subject to health and environmental standards, or on the private property of a consenting owner pursuant to subsection (c) of this section. A person may utilize a boat or airplane to perform such scattering. Cremated remains shall be removed from their closed container before they are scattered. (1989 (Reg. Sess., 1990), c. 988, s. 1; 1997-399, s. 20; 2003-420, s. 2; 2007-531, s. 24.)

§ 90-210.131. Limitation of liability.

(a) Any person signing a cremation authorization form as authorizing agent shall be deemed to warrant the truthfulness of any facts set forth in the cremation authorization form, including the identity of the deceased whose remains are sought to be cremated and that person's authority to order such cremation.

(b) A crematory licensee shall have authority to cremate human remains only upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability of a crematory licensee that cremates human remains pursuant to such authorization or that releases or disposes of the cremated remains pursuant to such authorization. A crematory licensee and funeral establishment or licensee thereof who causes the crematory licensee to act shall have no liability for the final disposition or manner in which the cremated remains are handled after the cremated remains are released in accordance with the directions of the authorizing agent.

(c) A crematory licensee shall not be responsible or liable for any valuables delivered to the crematory licensee with human remains.

(d) A crematory licensee shall not be liable for refusing to accept a body or to perform a cremation until it receives a court order or other suitable confirmation that a dispute has been settled if:

- (1) It is aware of any dispute concerning the cremation of human remains;
- (2) It has a reasonable basis for questioning any of the representations made by the authorizing agent; or
- (3) For any other lawful reason.

(e) If a crematory licensee is aware of any dispute concerning the release or disposition of the cremated remains, the crematory licensee may refuse to release the cremated remains until the dispute has been resolved or the crematory licensee has been provided with a court order authorizing the release or disposition of the cremated remains. A crematory licensee shall not be

liable for refusing to release or dispose of cremated remains in accordance with this subsection. A crematory licensee may charge a reasonable storage fee if the dispute is not resolved within 30 days after it is received by the crematory licensee. (1989 (Reg. Sess., 1990), c. 988, s. 1; 1997-399, s. 21; 2003-420, s. 2.)

§ 90-210.132. Fees.

(a) The Board may set and collect fees not to exceed the following amounts from crematory licensees, crematory manager permit holders, and applicants:

- (1) Licensee application fee. \$400.00
- (2) Annual renewal fee. 150.00
- (3) Late renewal fee. 75.00
- (4) Reinspection fee. 100.00
- (5) Per cremation fee. 10.00
- (6) Late fee, per cremation. 10.00
- (7) Late fee, cremation report. 75.00 per month
- (8) Crematory manager permit application fee. 150.00
- (9) Annual crematory manager permit renewal fee. 40.00.

(b) The funds collected pursuant to this Article shall become part of the general fund of the Board. (1989 (Reg. Sess., 1990), c. 988, s. 1; 1997-399, s. 22; 2003-420, s. 2.)

§ 90-210.133. Crematory licensee rights.

(a) A crematory licensee may adopt reasonable rules consistent with this Article for the management and operation of a crematory. Nothing in this subsection may be construed to prevent a crematory licensee from adopting rules which are more stringent than the provisions of this Article.

(b) Nothing in this Article may be construed to relieve the crematory licensee from obtaining any other licenses or permits required by law.

(c) Nothing in this Article shall prohibit or require the performance of cremations by crematory licensees or crematory managers for or directly with the public or exclusively for or through licensed funeral directors. (1989 (Reg. Sess., 1990), c. 988, s. 1; 2003-420, s. 2.)

§ 90-210.134. Rulemaking, applicability, violations, and prohibitions of Article.

(a) The Board is authorized to adopt and promulgate such rules for the carrying out and enforcement of the provisions of this Article as may be necessary and as are consistent with the laws of this State and of the United States. The Board may develop a Standard Cremation Authorization Form and procedures for its execution that shall be used by the crematory licensee subject to this Article, unless a crematory has its own form approved by the Board. A crematory licensee that uses its own approved cremation authorization form must have the cremation authorization form reapproved if changed or after amendments are made to this Article or the rules adopted by the Board related to cremation authorization forms. The Board may perform such other acts and exercise such other powers and duties as may be provided in this Article, in Article 13A of this Chapter, and otherwise by law and as may be necessary to carry out the powers herein conferred.

(b) The provisions of this Article shall not apply to the cremation of medical waste performed by the North Carolina Anatomical Commission, licensed hospitals and medical

schools, and the office of the Chief Medical Examiner when the disposition of such medical waste is the legal responsibility of the institutions.

(c) A violation of any of the provisions of this Article is a Class 2 misdemeanor.

(d) No person, firm, or corporation may request or authorize cremation or cremate human remains when the person, firm, or corporation has information indicating a crime or violence of any sort in connection with the cause of death unless such information has been conveyed to the State or county medical examiner and permission from the State or county medical examiner to cremate the human remains has thereafter been obtained. (1989 (Reg. Sess., 1990), c. 988, s. 1; 1993, c. 539, s. 640; 1994 Ex. Sess., c. 24, s. 14(c); 2003-420, s. 2.)

§ 90-210.135. Cremation societies.

No person, firm, or corporation licensed as a crematory under the provisions of this Article may operate a cremation society without first registering the name of the cremation society with the Board. (2007-531, s. 25.)

CHAPTER 34 - BOARD OF FUNERAL SERVICE

SUBCHAPTER 34A - BOARD FUNCTIONS

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 34A .0101 AGENCY NAME AND ADDRESS

The name of the agency promulgating the rules in this Chapter is the North Carolina Board of Funeral Service. As used in these Rules, the word "Board" shall refer to this agency. The office of the Board is located at 1033 Wade Avenue, Suite 108, Raleigh, North Carolina 27605.

History Note: Authority G.S. 90-210.22; 90-210.23(a);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. July 1, 2004; November 1, 2001; December 1, 1993; July 1, 1991; October 1, 1983.

21 NCAC 34A .0102 PURPOSE OF BOARD

History Note: Authority G.S. 90-210.23(a),(i);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. August 1, 2004; May 1, 1993; July 1, 1991;
Repealed Eff. August 1, 2012.

21 NCAC 34A .0103 PETITION FOR NOMINATION

All petitions for nomination of a person to the North Carolina Crematory Authority must be submitted on forms provided by the Board. The nominee shall furnish the name of the nominee and the signatures of three crematory operators.

History Note: Authority G.S. 90-210.122(c); 90-210.134(a);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. January 1, 2009; August 1, 2004; July 1, 1991.

21 NCAC 34A .0104 VOTING RECORDS

The Board shall maintain records for elections to the North Carolina Crematory Authority to show that a ballot was mailed to each crematory licensee and to show whether a ballot-enclosing envelope has been returned. Voting records shall include the name, address, and license number of the crematory operator, a record of whether and when the ballot has been mailed, and a record of whether and when the ballot-enclosing envelope has been returned.

History Note: Authority G.S. 90-210.23(a); 90-210.122(c); 90-210.134(a);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. January 1, 2009; August 1, 2004; July 1, 1991; September 1, 1979.

21 NCAC 34A .0105 PUBLIC INSPECTION OF MATERIALS

History Note: Authority G.S. 90-210.23(a),(i);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. August 1, 1988; September 1, 1979;
Repealed Eff. August 1, 2012.

21 NCAC 34A .0106 REQUESTS FOR REASONS FOR ADOPTION OF RULE

For the purpose of dealing with a request by an interested person for a statement of reasons for adoption of a rule pursuant to G.S. 150B-12(e), an "interested person" shall be defined as any person affected by the rule. The request shall

be in writing and dated and signed by the person submitting the same and shall be submitted in person or by mail to the office of the Board. It shall include a description of the rule referred to, and it may include any arguments or data the person believes to be relevant in connection with his request. The Board shall, not later than 15 days following the adoption of the rule or 15 days following the receipt of the request, whichever is later, deposit in the United States mail, postage prepaid, a written statement addressed to the person making the request, informing him as to the principal reasons for and against the adoption of the rule, incorporating therein the Board's reasons for overruling the consideration urged against its adoption.

History Note: Authority G.S. 90-210.23(a); 150B-11(1); 150B-12(e);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. August 1, 1988.

21 NCAC 34A .0107 REQUESTS FOR PROMULGATION: AMENDMENT OR REPEAL

For the purpose of dealing with a petition of any person requesting an agency to adopt a rule, pursuant to G.S. 150B-20, the following procedures shall apply:

- (1) The petition shall be in writing and dated and verified by the petitioner and shall be submitted in person or by mail to the office of the Board.
- (2) The petition shall contain the name and address of the petitioner; his license number or numbers if licensed by the Board; his current employment; a description of the existing rule sought to be amended or repealed; a statement of the proposed rule or amendment to a rule; an argument in support of the petition; and a statement of how the proposed rule, amendment or repeal of a rule would affect the petitioner, if at all.
- (3) Within the time limits prescribed by G.S. 150B-20 the Board shall meet, at which meeting at least a quorum of its members shall be present, to consider the petition. At such meeting the Board shall decide, by majority vote of those present, whether to deny the petition or to initiate rule-making proceedings in accordance with G.S. 150B-21.1, G.S. 150B-21.1A, and G.S. 150B-21.2. Rule-making shall be initiated if the Board concludes, based on a study of the facts involved, that the public interest will be served thereby. The Board shall consider all of the contents of the submitted petition, plus any additional information it deems relevant. The Board shall, within the time limits prescribed by G.S. 150B-20, deposit in the United States mail, postage prepaid, a written statement addressed to the petitioner informing him as to whether the Board denied or approved the petition. If the decision is to deny the petition, such written statement shall include the Board's reasons for the denial. If the decision is to approve the petition, the Board shall proceed to issue notices of proposed rule-making within the time limits prescribed by G.S. 150B-20.

History Note: Authority G.S. 90-210.23(a); 150B-20;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. July 1, 2004; August 1, 1988.

21 NCAC 34A .0108 REQUESTS FOR DECLARATORY RULING

(a) For the purpose of dealing with a request by a person aggrieved for a declaratory ruling, pursuant to G.S. 150B-4, the following procedures shall apply:

- (1) The request shall be in writing on a form provided by the Board, dated and verified by the person submitting the same, and shall be submitted in person or by mail to the office of the Board.
- (2) The form shall require the individual to submit the name and address of the person submitting the same; his or her license number or numbers if licensed by the Board; his or her current employment; a description of the rule or statute referred to; a statement of any facts the applicability of which to a rule or statute the person is questioning; and a statement of the manner in which the person is aggrieved by the rule or statute or its potential application to him or her.

- (3) Within 30 days after receiving such a request completed form, the Board shall meet, at which meeting at least a quorum of its members shall be present, to consider the request. At such meeting the Board shall make a decision by majority vote of those present as to whether to issue the ruling. The Board shall issue a ruling except:
- (A) when it finds that the person making the request is not a "person aggrieved", as defined in G.S. 150B-2(6); or
 - (B) when it finds, in a request concerning the validity of a rule, that the circumstances are so unchanged since the adoption of the rule in question that a ruling would not be warranted; or
 - (C) when it finds, in a request concerning the validity of a rule, that the rulemaking record shows that the Board considered all specified relevant factors when it adopted the rule in question.

(b) The Board shall, not later than the 60th day after it received such a request, deposit in the United States mail, postage prepaid, a written statement addressed to the person making the request and setting forth the Board's ruling on the merits of the request for a declaratory ruling, or setting forth the reason the ruling was not made, as the case may be. If the Board decides to make the ruling, it may make the ruling at the meeting convened to consider the request, or it may defer its ruling until a later date, but not later than the 60th day after the request for a ruling is received. Before making the ruling the Board may gather additional information, may give notice to other persons and may permit such other persons to submit information or arguments under such conditions as are set forth in such notice. Such ruling shall be made by the Board at a meeting at which at least a quorum of its members shall be present and by majority vote of those present.

History Note: Authority G.S. 90-210.23(a); 150B-4;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. January 1, 2009; July 1, 2004.

21 NCAC 34A .0109 ADMINISTRATIVE HEARING PROCEDURES

The following rules establishing procedures for contested cases, adopted by the Office of Administrative Hearings and contained in Title 26, Chapter 3 of the North Carolina Administrative Code, are hereby incorporated by reference for contested cases for which the Board has authority to adopt rules under G.S. 150B-38(h): .0101(1), .0105, .0106, .0112, .0113, .0114, .0115, .0116, .0117, .0118, .0119, .0120, .0121, .0122 and .0125. This incorporation is made under G.S. 150B-21.6 and applies to the listed rules in 26 NCAC 03 as amended as of January 1, 2004. References in such rules to the Office of Administrative Hearings shall be deemed for this purpose to be references to the Board, and the presiding officer for board hearings shall have the powers and duties given in such rules to the administrative law judge. Copies of the rules adopted by reference are on file in the Board's office and may be obtained there.

History Note: Authority G.S. 90-210.23(a),(d); 150B-21.6; 150B-38(h);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. July 1, 2004; December 1, 1988; July 1, 1988.

- 21 NCAC 34A .0110 REQUEST FOR HEARING IN CONTESTED CASE**
- 21 NCAC 34A .0111 GRANTING: DENYING HEARING REQUEST: CONTESTED CASE**
- 21 NCAC 34A .0112 NOTICE OF HEARING IN CONTESTED CASE**
- 21 NCAC 34A .0113 WHO SHALL HEAR**
- 21 NCAC 34A .0114 PETITION FOR INTERVENTION IN CONTESTED CASE**
- 21 NCAC 34A .0115 TYPES OF INTERVENTION**
- 21 NCAC 34A .0116 SUBPOENAS**

History Note: Authority G.S. 90-210.23(a),(d); 150B-11; 150B-23; 150B-27; 150B-32(a);
150B-34; 150B-36;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Repealed Eff. July 1, 1988.

21 NCAC 34A .0117 FORM OF SUBPOENA

All subpoenas shall be issued on forms provided by the Board. The subpoena shall furnish the name of the contested case; the name of the person subpoenaed; the date, time, and place to appear; the name of the person or persons applying for the subpoena; and any other information the Board deems necessary as determined by law. The form shall be signed and dated by an authorized representative of the Board and the party serving the subpoena, if applicable.

History Note: Authority G.S. 90-210.23(a);
 Eff. February 1, 1976;
 Readopted Eff. September 27, 1977;
 Amended Eff. August 1, 2004; August 1, 1988.

21 NCAC 34A .0118 FORM OF SUBPOENA TO PRODUCE DOCUMENT OR OBJECT

All subpoenas to produce documents or objects shall be issued on forms provided by the Board. The subpoena shall furnish name of the contested case; the name of the person subpoenaed; the date, time, and place to appear; a description of the documents or objects to bring; the name of the person or persons applying for the subpoena; and any other information the Board deems necessary as required by law. The subpoena shall be signed and dated by an authorized representative of the Board and the party serving the subpoena, if applicable.

History Note: Authority G.S. 90-210.23(a);
 Eff. February 1, 1976;
 Readopted Eff. September 27, 1977;
 Amended Eff. August 1, 2004; August 1, 1988.

21 NCAC 34A .0119 FINAL DECISION IN CONTESTED CASE

21 NCAC 34A .0120 PROPOSAL FOR DECISION IN CONTESTED CASE

History Note: Authority G.S. 90-210.23(a),(d); 150B-11; 150B-23; 150B-27; 150B-32(a);
 150B-34; 150B-36;
 Eff. February 1, 1976;
 Readopted Eff. September 27, 1977;
 Repealed Eff. July 1, 1988.

21 NCAC 34A .0121 NOTICE MAILING LIST

Any person or agency desiring to be placed on the mailing list for board rulemaking notices may file such request in writing with the Board office, furnishing his or its name and mailing address. The letter of request should state those subject areas within the authority of the Board for which notice is requested. The Board may require reasonable postage and stationery costs to be paid by persons receiving such notices.

History Note: Authority G.S. 90-210.23(a); 150B-11(1);
 Eff. February 1, 1976;
 Readopted Eff. September 27, 1977.

21 NCAC 34A .0122 CHARACTER AFFIDAVIT FORM

Affidavits of good moral character shall be furnished on forms provided by the Board. The affiant shall furnish the name and address of the affiant, the name of the applicant, the length of time the affiant has been acquainted with the applicant, an affirmation of the good moral character of the applicant, certification by a notary public, and other information the Board deems necessary as required by law.

History Note: Authority G.S. 90-210.23(a); 90-210.26;

Eff. September 1, 1979;
Amended Eff. August 1, 2004.

21 NCAC 34A .0123 CONSUMER COMPLAINT FORM

The Board may provide consumer complaint forms. The complainant shall furnish the names and addresses of all parties involved, a description of the complaint, the signature of the complainant, and other information that the Board deems necessary as required by law.

History Note: Authority G.S. 90-210.23(a); 90-210.18(a); 90-210.25(e); 90-210.134(a);
Eff. September 1, 1979;
Recodified from 21 NCAC 34 .0124 Eff. February 7, 1991;
Amended Eff. August 1, 2004.

21 NCAC 34A .0124 SOLICITATION

(a) Definitions. As used in this Rule:

- (1) "Licensee" shall mean a person licensed by the Board as a funeral service, funeral director, or embalmer.
- (2) "Real-time communication" shall mean any in-person, live telephone, or real-time electronic contact.
- (3) "Solicit" shall mean engaging in the act of solicitation.
- (4) "Solicitation," shall mean any uninvited, intentional contact with an individual for the purpose of procuring the right to provide funeral services or merchandise, either immediately or at a future date when financial gain is a significant motive.

(b) All licensees of the Board must comply with the following in order to avoid committing solicitation as prohibited by G.S. 90-210.25(e)(1)d:

- (1) A licensee of the Board shall not solicit professional employment from a prospective customer by real-time communication when a significant motive for the licensee's doing so is the licensee's pecuniary gain, unless the person contacted:
 - (A) is a licensee; or
 - (B) has a family, close personal, or prior professional relationship with the licensee.
- (2) A licensee shall not solicit professional employment from a prospective customer by real-time communication or by written, recorded or electronic communication that is not a real-time communication even when allowed by Parts (b)(1)(A) or (b)(1)(B) of this Rule if:
 - (A) the prospective customer has made known to the licensee a desire not to be solicited by the licensee; or
 - (B) the solicitation involves coercion, duress, harassment, compulsion, intimidation, or threats.
- (3) Every written, recorded or electronic communication that is not a real-time communication from a licensee soliciting professional employment from a prospective customer known to be in need of funeral services for an imminent or recent death shall include the words "This is an advertisement for funeral services" on the outside envelope, if a written communication sent by mail, and at the beginning of the body of a written or electronic communication in print as large or larger than the licensee's or licensee's business name, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in Parts (b)(1)(A) or (b)(1)(B) of this Rule.

(c) A licensee shall violate this Rule whenever any agent, employee, or assistant of the licensee violates Subparagraphs (b)(1), (b)(2), or (b)(3) of this Rule with the knowledge, direction, or consent of the licensee.

History Note: Authority G.S. 90-210.23(a); 90-210.25(e)(1)d;
Eff. April 1, 1987;
Recodified from 21 NCAC 34 .0126 Eff. February 7, 1991;
Amended Eff. February 1, 2009; July 1, 2004.

21 NCAC 34A .0125 FINGERPRINTS

The Board shall require applicants for registration as resident trainees and for licensure to submit to a fingerprint check; provided, however, the Board may waive this requirement for an applicant for licensure who previously submitted to a fingerprint check as an applicant for registration as a resident trainee.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(1), (2), (3), (4); 90-210.25(e)(1); 90-210.43(f); 90-210.50(a); 90-210.67(b), (c); 90-210.69(a), (c);
Eff. August 2, 1993.

21 NCAC 34A .0126 COMPLAINTS; PRELIMINARY DETERMINATIONS

(a) A person who believes that any person, firm or corporation is in violation of any provision of G.S. 90, Article 13A, 13D, 13E, or 13F or Title 21, Chapter 34, of the North Carolina Administrative Code, may file a written complaint with the Board's staff. If the accused is subject to the jurisdiction of the Board, the complaint shall be handled pursuant to this Rule.

(b) A complaint shall be handled initially by the Board's Executive Director, or staff designated by him or her. If a complaint on its face appears to be outside the jurisdiction of the Board, the Executive Director or his or her staff designees may forward the complaint to the Board's disciplinary committee without following the procedures of Paragraphs (c) through (e) of this Rule and may forward the matter to any federal or state agency with the appropriate jurisdiction.

(c) The Executive Director or his or her staff designees shall notify the accused of the complaint in writing. Such notice shall be served by hand or by certified mail, return receipt requested; shall state the allegations as contained in the complaint, or may enclose a copy of the complaint; and shall contain a request that the accused submit a response in writing within 10 days from the date the notice of the complaint is received by the accused.

(d) If the accused responds to the allegations, the Executive Director or his or her staff designees shall forward a summary of the response, or the response itself, to the person who filed the complaint and give him or her 15 days to respond. Following a receipt of a rebuttal by the complainant or after 15 days without having received a rebuttal and any additional investigation deemed necessary by the Executive Director or his or her staff designees, the matter shall then be referred to the disciplinary committee.

(e) If the accused does not respond to the allegations, the Executive Director or his or her staff designees shall investigate the allegations and refer the complaint and any other available evidence to the Board's disciplinary committee for review.

(f) In accordance with Paragraphs (d) through (e) of this Rule, the disciplinary committee shall review the complaint file. The disciplinary committee may request additional investigation of a file or make a preliminary determination to recommend that the Board take one of the following actions:

- (1) that the complaint be dismissed because of insufficient grounds to believe one or more licensees has violated any law or regulation of the Board or other grounds requiring dismissal;
- (2) that a letter of caution be issued;
- (3) that the case be compromised pursuant to G.S. 90-210.25(e)(1), 90-210.123(g), or 90-210.69(c);
- (4) that the case be set for a contested case hearing because sufficient grounds exist to believe one or more licensees may have violated a law or regulation of the Board justifying disciplinary action; or
- (5) Any other action the Board may take that is authorized by law.

(g) The Board may accept or reject, in whole or in part, the recommendations of the disciplinary committee.

History Note: Authority G.S. 90-210.23(a),(d); 90-210.25(e); 90-210.69(a),(c); 90-210.80; 90-210.123(g); 90-210.134(a);
Eff. October 1, 1993;
Amended Eff. February 1, 2009; July 1, 2004; August 1, 1998; November 1, 1994.

21 NCAC 34A .0127 FILING OF DOCUMENTS

Any document that does not require a fingerprint card or the payment of a fee, or that does not pertain to elections to the N.C. Crematory Authority or to a resident traineeship, may be filed with the Board by U.S. mail, private courier service, facsimile, or hand delivery. All other documents must be filed by U.S. mail, private courier service, or hand delivery.

Documents shall be considered filed on the date of receipt or, if sent by U.S. mail or private courier service, on the date of postmark or date stamp used by the private courier respectively.

*History Note: Authority G.S. 90-210.23(a);
Eff. January 1, 2009.*

SECTION .0200 - FEES AND OTHER PAYMENTS

21 NCAC 34A .0201 FEES AND OTHER PAYMENTS

(a) Fees for funeral service shall be as follows:

| | |
|---|-----------|
| Establishment permit | |
| Application | \$250.00 |
| Annual renewal | \$200.00 |
| Late renewal fee | \$100.00 |
| Establishment and embalming facility reinspection fee | \$100.00 |
| Courtesy card | |
| Application | \$ 75.00 |
| Annual renewal | \$ 50.00 |
| Out-of-state licensee | |
| Application | \$200.00 |
| Embalmer, funeral director, funeral service | |
| Application, North Carolina resident | \$150.00 |
| Application, non-resident | \$200.00 |
| Annual renewal | |
| Embalmer | \$ 75.00 |
| Funeral Director | \$ 75.00 |
| Total fee, embalmer and funeral director, when both are held by same person | \$ 100.00 |
| Funeral service | \$ 100.00 |
| Inactive status | \$ 30.00 |
| Reinstatement fee | \$ 50.00 |
| Resident trainee permit | |
| Application | \$ 50.00 |
| Voluntary change in supervisor | \$ 50.00 |
| Annual renewal | \$ 35.00 |
| Late renewal | \$ 25.00 |
| Duplicate License certificate | \$ 25.00 |
| Chapel registration | |
| Application | \$150.00 |
| Annual renewal | \$100.00 |
| Late renewal | \$ 75.00 |

(b) Fees for crematories shall be as follows:

| | |
|---|----------|
| License | |
| Application | \$400.00 |
| Annual renewal | \$150.00 |
| Late renewal fee | \$ 75.00 |
| Crematory reinspection fee | \$100.00 |
| Per-cremation fee | \$ 10.00 |
| Late filing or payment fee for each cremation | \$ 10.00 |
| Late filing fee for cremation report, per month | \$ 75.00 |
| Crematory Manager Permit | |
| Application | \$150.00 |
| Annual renewal | \$ 40.00 |

(c) Fees for preneed funeral contract regulation shall be as follows:

Preneed funeral establishment license

| | |
|---|----------|
| Application | \$150.00 |
| Annual renewal | \$150.00 |
| Late renewal fee | \$100.00 |
| Reinspection fee | \$100.00 |
| Preneed sales license | |
| Application | \$ 20.00 |
| Annual renewal | \$ 20.00 |
| Late renewal fee | \$ 25.00 |
| Preneed contract filings | |
| Filing fee for each contract | \$ 20.00 |
| Late filing or payment fee for each contract | \$ 25.00 |
| Late filing fee for each certificate of performance | \$ 25.00 |
| Late filing fee for annual report | \$150.00 |
| (d) Fees for Transportation Permits | |
| Application | \$125.00 |
| Annual renewal | \$ 75.00 |
| Late fee | \$ 50.00 |

History Note: Authority G.S. 90-210.23(a); 90-210.25(c); 90-210.28; 90-210.67(b),(c),(d),(d1); 90-210.68(a); Eff. September 1, 1979;
Amended Eff. January 1, 1991; July 1, 1988; January 1, 1988; October 1, 1983;
Recodified from 21 NCAC 34 .0123 Eff. February 7, 1991;
Amended Eff. December 1, 1993; August 2, 1993; May 1, 1993, July 1, 1991;
Temporary Amendment Eff. October 1, 1997;
Amended Eff. August 20, 2014; March 1, 2004; August 1, 1998;

21 NCAC 34A .0202 WORTHLESS CHECKS

- (a) Any person, firm or corporation submitting to the Board a check which is dishonored and returned shall be charged a processing fee in the maximum amount per check as permitted by the North Carolina law in effect at the time.
- (b) Until the worthless check has been made good and the processing fee and any applicable late payment penalties have been paid, any license, permit, authority or privilege which has been issued or given based on the worthless check shall be invalid.
- (c) All documents delivered by the Board requesting payment of fees shall contain a notice of the processing fee as required by North Carolina law.

History Note: Authority G.S. 90-210.23(a); 25-3-512; 150B-11;
Eff. October 1, 1983;
Amended Eff. July 1, 1988;
Recodified from 21 NCAC 34 .0125 Eff. February 7, 1991.

21 NCAC 34A .0203 REPORT TO GENERAL ASSEMBLY

- (a) No later than October 31 of each calendar year, the Board shall file the reports required by G.S. 93B-2. If the Board fails to timely file a report, all funds received after October 31 shall be deposited into an escrow account with a financial institution, as such term is defined in G.S. 90-210.60(2), until the report has been filed. The Board may resume the expenditure of funds in accordance with G.S. 93B-2 immediately upon depositing the report into the custody of the U.S. Postal Service as certified mail return receipt requested.
- (b) Any period of suspension under G.S. 93B-2(d) shall have no effect upon the right of a license or permit applicant to the issue or renewal of any license or permit upon meeting all legal requirements; provided, however, that this Rule shall not impose any duty upon the Board to issue any license or permit outside its normal operating procedures.

*History Note: Authority G.S. 90-210.23(a); 93B-2(d);
Eff. September 1, 2010.*

SUBCHAPTER 34B - FUNERAL SERVICE

SECTION .0100 - RESIDENT TRAINEES

Editor's Note: 21 NCAC 34B .0101 - .0125 was recodified from 21 NCAC 34 .0201 - .0225 Eff. February 7, 1991.

21 NCAC 34B .0101 CASE VOLUME OF ESTABLISHMENT

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(4); 150A-11;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Repealed Eff. September 1, 1979.

21 NCAC 34B .0102 TRAINEESHIP

Each trainee must work at least 2,000 hours during the trainee's resident traineeship. Daytime and nighttime employment shall be acceptable so long as the trainee receives training in all aspects of the license sought, as defined in G.S. 90-210.20(e), (f), and (k).

History Note: Authority G.S. 90-210.23(a),(f); 90-210.25(a)(1)d.,(2)d.,(3)d.,(4);
Eff. February 1, 1976;
Readopted Eff. September 27, 1997;
Amended Eff. December 1, 2004; August 1, 1998; August 1, 1988; October 1, 1983; September 1, 1979.

21 NCAC 34B .0103 AUTHORIZED PRACTICE: SUPERVISION

(a) Duly certified resident trainees in training for funeral service, duly certified resident trainees in training for funeral directing and duly certified resident trainees in training for embalming, while participating in learning experiences and while supervised by a person licensed by the Board as a funeral service licensee, funeral director or embalmer, respectively, may assist in the practice of funeral service, funeral directing or embalming respectively, as limited by this Rule.

(b) A licensee wishing to supervise a trainee shall meet the following requirements:

- (1) The licensee shall have either practiced continuously in North Carolina for a minimum of five years before the date of the application, or shall have taken a trainee supervisor certification course provided by the Board; and
- (2) The licensee shall not have any disciplinary action taken by the Board or the licensing board of any other jurisdiction to suspend or revoke his or her license during the five years preceding the application.

(c) Duly certified resident trainees in training for funeral service or for funeral directing, while participating in learning experiences and while supervised by a person licensed by the Board as a preneed sales licensee, may also assist in the preneed funeral planning activities described in 21 NCAC 34D .0202(b)(1), (2), (4), and (5).

(d) No credit shall be given for the resident trainee's work that is unsupervised or performed under the supervision of a person not registered with the Board as the resident trainee's supervisor. If the registered supervisor does not supervise the resident trainee for a continuous period of more than two weeks, the traineeship under that supervisor shall terminate, requiring a new traineeship application. When a resident trainee assists in funeral service, funeral directing, embalming or preneed funeral planning on the funeral home premises, a licensed supervisor shall be on the funeral home premises where and while such activities are performed; provided that a licensed supervisor shall be present in the same room whenever a resident trainee accepts any initial payment or negotiates any contract for funeral services either at-need or pre-need with the public. When a resident trainee assists in funeral service, funeral directing, embalming or any funeral planning off the funeral home premises, such activities shall be performed only in the presence of a licensed supervisor employed with the establishment with which the resident trainee is registered.

(e) A licensed supervisor shall review with the purchaser any contract negotiated by a resident trainee, and then the licensed supervisor shall obtain the purchaser's signature on the contract in the licensed supervisor's presence.

(f) The resident trainee's license certificate for indicating the trainee's authority to assist in the activities described and authorized in this Rule and in 21 NCAC 34D .0202(b) is the resident trainee pocket certificate.

History Note: Authority G.S. 90-210.23(a),(f); 90-210.25(a)(4),(5)d.; 90-210.67(a); 90-210.69(a);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;

Amended Eff. January 1, 2009; November 1, 2004; August 1, 1998; June 1, 1994.

21 NCAC 34B .0104 CHANGE IN EMPLOYMENT

Each resident trainee shall complete an application form prescribed by the Board prior to making any change in employment during the resident traineeship. The form shall require the applicant to furnish the name of the trainee, the former funeral establishment and supervisor, the dates of services with the former funeral establishment, the proposed funeral establishment and supervisor, the proposed effective date of the change, and any other information the Board deems necessary as determined by law.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(4)c.;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. December 1, 2004; September 27, 1979.

21 NCAC 34B .0105 FUNERAL DIRECTOR TRAINEE APPLICATION FORM

Applications for a funeral director resident trainee shall be made on forms provided by the Board. The applicant shall furnish the applicant's photograph, name, address and biographical data; education; employment history; criminal convictions; verification by the applicant; an affidavit of a licensee that the trainee is serving under him or her; and any other information the Board deems necessary as required by law. A transcript of the applicant's high school record must accompany the application.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(4);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004.

21 NCAC 34B .0106 EMBALMER TRAINEE APPLICATION FORM

Applications for an embalmer resident trainee shall be made on forms provided by the Board. The applicant shall furnish the applicant's photograph, name, address and biographical data; education; employment history; criminal convictions; verification by the applicant; an affidavit of a licensee that the trainee is serving under him or her; and any other information the Board deems necessary as required by law. A transcript of the applicant's high school record must accompany the application.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(4);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004.

21 NCAC 34B .0107 FUNERAL SERVICE TRAINEE APPLICATION FORM

Applications for a funeral service resident trainee shall be made on applications provided by the Board. The form shall require the applicant to furnish the applicant's photograph, name, address and biographical data; education; employment history; criminal convictions; verification by the applicant; an affidavit of a licensee that the trainee is serving under him or her; and any other information the Board deems necessary as required by law. A transcript of the applicant's high school record must accompany the application.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(4);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Eff. November 1, 2004.

21 NCAC 34B .0108 TRAINEE POCKET CERTIFICATE

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(4);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;

Repealed Eff. November 1, 1994.

21 NCAC 34B .0109 EFFECTIVE DATE OF CERTIFICATE

The certificate of resident traineeship shall be effective upon the date of issuance thereof by the Board or its authorized representative.

*History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(4); 150B-11(1);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977.*

21 NCAC 34B .0110 REPORTS ON WORK

The resident trainee shall submit a report to the Board every month on a form provided by the Board. The resident trainee shall furnish the name of the trainee; the reporting period for the work report; the name and address of the funeral establishment where the resident trainee is serving; a description of the work performed during the preceding month; and any other information the Board deems necessary as required by law. The form shall be signed by the resident trainee and must be certified as correct by the licensee under whom the trainee served during the period and by the manager of the funeral establishment. The names of the deceased persons, and the names of the purchasers of preneed funeral contracts, on whose cases the trainee assisted and reported during traineeship must be retained by the trainee until his traineeship requirement has been fulfilled, and during such time such information shall be subject to inspection by the Board or its authorized agent. Such reports must be filed in the office of the Board not later than the 10th day of the calendar month which immediately follows the completion of each one month period of resident traineeship. Failure to submit such reports when due shall be sufficient cause for suspension or revocation of the certificate of resident traineeship.

*History Note: Authority G.S. 90-210.23(a),(d),(f); 90-210.25(a)(4)e.,(4)g; 90-210.67(a); 90-210.69(a);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; June 1, 1994; August 1, 1988; September 1, 1979.*

21 NCAC 34B .0111 WORK REPORT FORM

*History Note: Authority G.S. 90-210.23(a),(d),(f); 90-210.25(a)(4);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. August 1, 1988; September 1, 1979;
Repealed Eff. November 1, 2004.*

- 21 NCAC 34B .0112 FUNERAL SERVICE AND FUNERAL DIRECTING CASE REPORT FORM**
- 21 NCAC 34B .0113 TRAINEE'S SUMMARY CASE REPORT FORM**
- 21 NCAC 34B .0114 TRAINEE'S ACTIVITY REPORT FORM**
- 21 NCAC 34B .0115 REPORTS ON STUDY SCHEDULE**
- 21 NCAC 34B .0116 DESCRIPTION OF STUDY SCHEDULE**
- 21 NCAC 34B .0117 ANATOMICAL DIAGRAM**
- 21 NCAC 34B .0118 BOARD CHECK SHEET FOR TRAINEE**
- 21 NCAC 34B .0119 FINAL AFFIDAVIT: RENEWAL CERTIFICATE**

*History Note: Authority G.S. 90-210.23(a),(f); 90-210.25(a)(4); 150A-11;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Repealed Eff. September 1, 1979.*

21 NCAC 34B .0120 TRAINEE FINAL AFFIDAVIT FORM

Upon the conclusion of a resident traineeship with a licensed supervisor, the supervisor shall submit an affidavit to certify that the trainee has served and performed certain work under him as required by G.S. 90-210.25(a)(4). The affidavit shall be submitted within 30 days on forms provided by the Board and require the affiant to furnish the names of the licensee and the trainee; dates and place of service; the number of funerals, preneed funeral contracts and embalmings that the trainee has assisted in during traineeship; and any other information the Board deems necessary as required by law.

History Note: Authority G.S. 90-210.23(a),(d),(f); 90-210.25(a)(4)f.; 90-210.67(a); 90-210.69(a);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. January 1, 2009; November 1, 2004; June 1, 1994; August 1, 1988; September 1, 1979.

21 NCAC 34B .0121 EXPIRATION NOTICE

Prior to expiration of a resident trainee certificate, the Board may notify the resident trainee that if eligible, the traineeship may be renewed or may be certified as completed. The notice shall notify the trainee of the date of expiration, a recital of the renewal fee and late renewal penalty, the date the fee must be received, and a recital that the affidavit form is available to have the traineeship certified as completed, if applicable.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(4)d;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; September 1, 1979.

21 NCAC 34B .0122 TRAINEE INCOMPLETE AFFIDAVIT FORM

21 NCAC 34B .0123 RESIDENT TRAINEE FEES

21 NCAC 34B .0124 AUTHORIZED PRACTICE OF STUDENT

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(1),(2),(3),(4); 150A-11;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Repealed Eff. September 1, 1979.

21 NCAC 34B .0125 MORTUARY SCIENCE STUDENT PERMIT CARD

History Note: Authority G.S. 90-210.23(a); 90-210.29;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. August 1, 1988; September 1, 1979;
Repealed Eff. November 1, 1994.

21 NCAC 34B .0126 FUNERAL DIRECTING AND FUNERAL SERVICE TRAINING

To fulfill the requirements that funeral director and funeral service trainees shall assist in directing at least 25 funerals during resident traineeship, such trainees shall, under supervision, assist in all of the components of "funeral directing," as defined in G.S. 90-210.20(f), but as limited by 21 NCAC 34B .0103; and to achieve this end such trainees shall assist in, in at least 25 cases, activities of arranging (whether performed at time of need or by assisting in preneed funeral planning activities or a combination) and, in at least 25 cases, activities pertaining to the funeral ceremony and disposition of the body.

History Note: Authority G.S. 90-210.20(f); 90-210.23(a), (d), (f); 90-210.25(a)(4); 90-210.67(a); 90-210.69(a);
Eff. June 1, 1994.

SECTION .0200 - EXAMINATIONS

Editor's Note: 21 NCAC 34B .0201 - .0211 was recodified from 21 NCAC 34 .0301 - .0311 Eff. February 7, 1991.

21 NCAC 34B .0201 DATES OF EXAMINATIONS

History Note: Authority G.S. 90-210.23(a); 90-210.22; 150B-11(1);
Eff. February 1, 1976
Amended Eff. September 9, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. September 1, 1979;
Repealed Eff. August 1, 1998.

21 NCAC 34B .0202 APPLICATIONS

- (a) Applicants to take the examination for a license shall apply to the Board upon forms to be furnished by the Board. The application must be verified by the applicant and received by the Board at least 30 days prior to the date of the examination. Applicants are ineligible to take the examination before completing their educational requirements.
- (b) If the applicant does not sit for all examinations within 12 months of the filing date, the applicant forfeits the pending application and fee, and the applicant shall submit a new application and fee.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(1),(2),(3);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. January 1, 2009; October 1, 1983.

21 NCAC 34B .0203 APPLICATION FORM FOR FUNERAL DIRECTOR'S LICENSE

Applications for the examination for a funeral director's license shall be made on forms provided by the Board. The applicant shall furnish the applicant's photograph, name, address, biographical data, education, employment history, criminal convictions, verification, and any other information the Board deems necessary as required by law. A certified transcript of the applicant's mortuary science college record must be mailed directly to the Board from the mortuary science college. Three affidavits of the moral character of the applicant submitted by three persons, in compliance with G.S. 90-210.26, must also accompany the application.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(1);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; July 1, 1991; September 1, 1979.

21 NCAC 34B .0204 APPLICATION FORM FOR EMBALMER'S LICENSE

Applications for the examination for an embalmer's license shall be made on forms provided by the Board. The applicant shall furnish the applicant's photograph, name, address, biographical data, education, employment history, criminal convictions, verification, and any other information the Board deems necessary as required by law. A certified transcript of the applicant's mortuary science college record must be mailed to the Board directly from the mortuary science college. Three affidavits of the moral character of the applicant submitted by three persons, in compliance with G.S. 90-210.26, must also accompany the application.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(2);
Eff. February 1, 1976;

Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; September 1, 1979.

21 NCAC 34B .0205 APPLICATION FORM FOR FUNERAL SERVICE LICENSE

Applications for the examination for a funeral service license shall be made on forms provided by the Board. The applicant shall furnish the applicant's photograph, name, address, biographical data, education, employment history, criminal convictions, verification, and any other information the Board deems necessary as required by law. A certified transcript of the applicant's mortuary science college record must be mailed to the Board directly from the mortuary science. Three affidavits of the moral character of the applicant submitted by three persons, in compliance with G.S. 90-210.26, must also accompany the application.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(3);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; September 1, 1979.

21 NCAC 34B .0206 FINGERPRINT CARDS
21 NCAC 34B .0207 INSTRUCTIONS FOR COMPLETING FINGERPRINT CARD

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(1),(2),(3); 150A-11;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Repealed Eff. September 1, 1979.

21 NCAC 34B .0208 PASSING SCORE

The passing score on all examinations administered by the Board shall be such passing score that is established by the International Conference of Funeral Service Examining Boards, Inc. and in effect at the time such examinations are administered by the Board.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(1),(2),(3); 150A-11;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; September 1, 1979.

21 NCAC 34B .0209 WHEN EXAMINATIONS MAY BE TAKEN

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(1),(2),(3); 150A-11;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Repealed Eff. September 1, 1979.

21 NCAC 34B .0210 REQUEST FOR REVIEW OF EXAMINATION

For the purpose of dealing with a request by an applicant who has failed an examination for a review of his examination, the following procedures shall apply:

- (1) If the examination was prepared by the Board:
 - (a) The applicant shall make the request to the Board orally or in writing.
 - (b) Not later than 10 days following the receipt of such request the Board shall notify the applicant, either orally or in writing, of the date and time the applicant may appear in the offices of the Board to review the examination in the presence of the Board or in the presence of one or more duly designated representatives of the Board.

- (c) Nothing in this Rule shall be construed to give the applicant the right to take from the Board offices any copies of the examination or of the answers thereto.
- (2) If the examination was prepared and graded by the International Conference of Funeral Service Examining Boards, Inc. (ICFSEB):
 - (a) The applicant shall make his request to the ICFSEB in writing.
 - (b) The ICFSEB shall notify the applicant, either orally or in writing, of the date and time the applicant may appear in the offices of the ICFSEB to review the examination in the presence of the ICFSEB or in the presence of one or more duly designated representatives of the ICFSEB.
 - (c) Nothing in this Rule shall be construed to give the applicant the right to take from the ICFSEB offices any copies of the examination or of the answers thereto.

History Note: Authority G.S. 90-210.23(a);
 Eff. February 1, 1976;
 Readopted Eff. September 27, 1977;
 Amended Eff. November 1, 2004; September 1, 1979.

21 NCAC 34B .0211 NATIONAL BOARD CERTIFICATE

The Board shall accept a "National Board Certificate," certifying the successful completion of the National Board Examination of the International Conference of Funeral Service Examining Boards Inc., as the equivalent of that portion of the Board's examination which deals with basic health sciences, funeral service sciences, and funeral service administration. National Board Certificates shall be accepted for five years from the date of issue for licenses issued under G.S. 90-210.25(a)(1), (2), or (3).

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
 Eff. February 1, 1976;
 Readopted Eff. September 27, 1977;
 Amended Eff. February 1, 2009; November 1, 2004; September 1, 1979.

21 NCAC 34B .0212 DISABILITIES OF APPLICANTS FOR EXAMINATIONS

Applicants for examinations shall inform the Board in writing, with their applications, if they have a disability which requires a special accommodation to take the examination. Applicants shall state the nature of the disability and the type of accommodation requested. The Board may require proof of the disability.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(1), (2), (3);
 Eff. November 1, 1994.

21 NCAC 34B .0213 EXPIRATION OF TEST SCORES

Passing scores earned on any examination administered by the Board to obtain any license in North Carolina shall be valid for five years from the date of examination. Any passing score earned on any examination administered by the International Conference of Funeral Service Examining Boards, Inc., ("ICFSEB") that has not been used to receive a National Board Certificate, as defined in 21 NCAC 34B .0211, shall be valid for five years from the date of examination for licenses issued under G.S. 90-210.25(a)(1), (2), or (3).

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(1),(2),(3);
 Eff. February 1, 2009.

SECTION .0300 - LICENSING

Editor's Note: 21 NCAC 34B .0301 - .0309 was recodified from 21 NCAC 34 .0401 - .0409 Eff. February 7, 1991.

21 NCAC 34B .0301 ISSUANCE OF LICENSE: EXPIRATION

Applicants for a license who have passed the examination and have met all of the other qualifications for licensure shall be so notified by the Board, and their licenses shall be issued upon payment of the license fee. Such initial license shall expire on the December 31 of the year when issued.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(1),(2),(3),(5); 150B-11(1);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977.

21 NCAC 34B .0302 LICENSE CERTIFICATE FOR PRACTICE OF FUNERAL DIRECTING

Upon issuing a license to practice funeral directing, the Board shall send the licensee a certificate containing the name of the licensee, signatures of the Board members, and the date of issuance.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; August 1, 1988.

21 NCAC 34B .0303 LICENSE CERTIFICATE FOR PRACTICE OF EMBALMING

Upon issuing a license to practice embalming, the Board shall send the licensee a certificate containing the name of the licensee, signatures of the Board members, and the date of issuance.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; August 1, 1988.

21 NCAC 34B .0304 LICENSE CERTIFICATE FOR PRACTICE OF FUNERAL SERVICE

Upon issuing a license to practice funeral service, the Board shall send the licensee a certificate containing the name of the licensee, signatures of the Board members, and the date of issuance.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; August 1, 1988.

21 NCAC 34B .0305 CHANGE OF LICENSE REQUEST

A holder of both a license for funeral directing and a license for embalming, may request a license for the practice of funeral service. The request shall be submitted in writing on forms provided by the Board and shall require the licensee to furnish the applicant's name and license numbers, a request for the change, the signature of the licensee, and any other information the Board deems necessary as required by law.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004.

21 NCAC 34B .0306 LICENSE FEES

21 NCAC 34B .0307 REINSTATEMENTS

History Note: Authority G.S. 90-210.23(a); 90-210.25 (a)(1),(2),(3); 150A-11;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Repealed Eff. September 1, 1979.

21 NCAC 34B .0308 RENEWALS: NOTICES

The Executive Director of the Board shall, on or about December 1 of each year, mail to each licensee, to each holder of a funeral establishment permit and to each holder of a courtesy card a written notice that said license, permit or courtesy card shall expire as provided by law unless renewed.

*History Note: Authority G.S. 90-210.23(a);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 1994.*

21 NCAC 34B .0309 LICENSE RENEWAL FORM

To renew a funeral director, funeral service, or embalmer's license, the licensee annually shall submit a form provided by the Board. The licensee shall designate whether the licensee is on active or inactive status pursuant to G.S. 90-210.25(a). A licensee designating active status shall furnish the licensee's current place of employment, work address and telephone number, any new criminal convictions since the licensee was licensed, continuing education hours, the signature of the licensee, and any information the Board deems necessary as required by law. A licensee designating inactive status also shall furnish the licensee's name, address and telephone number, any new criminal convictions since the licensee was licensed, the signature of the licensee, and any other information the Board deems necessary as required by law. The renewal form shall inform all licensees that licenses will be forfeited if not renewed by February 1.

*History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004.*

21 NCAC 34B .0310 PRACTICE OF FUNERAL SERVICE OR FUNERAL DIRECTING NOT AS AN OWNER, EMPLOYEE OR AGENT OF A LICENSED FUNERAL ESTABLISHMENT

(a) A funeral director or funeral service licensee registered to practice under G.S. 90-210.25(a2) shall not use its business office required by G.S. 90-210.25(a2)(2)a. to conduct the practice of funeral service or funeral directing. A funeral director or funeral service licensee shall not hold out to the public that its business office is a funeral establishment and shall not use a business name that misleads the public to believe that its business office is a funeral establishment or operates or maintains a facility that is a funeral establishment.

(b) An applicant to practice under the provisions of G.S. 90-210.25(a2) shall submit a form provided by the Board with an application fee. The applicant shall furnish the name, address, telephone number, and county of location for the applicant and any business organization operating under the laws of North Carolina, the license number of the applicant, the location where the applicant shall shelter remains, the location where the applicant uses as an embalming facility, the name and license numbers of any other embalmers retained by a funeral director to embalm, and any other information the Board deems necessary as required by law. The applicant shall complete a verification before a notary public.

*History Note: Authority G.S. 90-210.20(h); 90-210.23(a); 90-210.25(a2)(2)a., b.; 90-210.27A(a), (i);
Eff. February 1, 2009.*

21 NCAC 34B .0311 SPECIAL PROCEDURES FOR LICENSING OF ACTIVE MILITARY PERSONNEL

(a) Definitions. As used in this Rule:

- (1) "Active military person" shall mean any person holding an applicable license or permit from the Board who meets the conditions of G.S. 105-249.2(a) and would be subject to any continuing education requirement, renewal fee, or renewal application to renew or reinstate any permit or license issued by the Board.
- (2) "Active military status" shall mean any active military person who is not practicing funeral service, funeral directing, or embalming because of military service.

- (3) "Active status" shall mean any person holding a license to practice funeral directing, funeral service, or embalming in good standing who has not been approved for an inactive license under the provisions of G.S. 90-210.25(a1).
 - (4) "Applicant" shall mean the active military person or any person authorized to conduct business affairs for the active military person under the authority granted by a power of attorney executed under the laws of any state.
- (b) The following provisions shall apply to funeral director, funeral service, and embalmer licenses only:
- (1) Any active military person wishing to claim active military status shall file a form provided by the Board. The applicant shall furnish the full name of the active military person; license number, address and telephone number of the active military person; date of active military service; anticipated date the active military person will resume practice, if known; and documentation from the branch of service demonstrating entitlement to active military status. The Board shall notify the applicant in writing of its decision on the application and shall place the active military person on active military status upon approving the application.
 - (2) No fees or renewal applications shall be required during the period of active military status. Continuing education shall not be required for any calendar year when active military status is effective. Any calendar year in which continuing education is not required of the active military person shall be credited toward the total years of continuing education required by G.S. 90-210.25(a)(5)e.
 - (3) Active military status shall terminate upon the earlier of return to active status or upon six months after severance from active military duty.
 - (4) Any active military person may claim active military status retroactively within six months from severance from active military duty.
 - (5) Any active military person whose license lapses for failing to timely claim active military status shall be subject to the provisions of reinstatement under G.S. 90-210.25(a)(5)b. and shall not be entitled to any waivers of continuing education, renewal fees, or reinstatement fees.
 - (6) To return to active status, the active military person shall file an application for renewal and renewal fee for the calendar year regardless of the date of application.
- (c) If any funeral establishment, crematory, or preneed establishment ceases operations because the active military person claims active military status, all such licenses or permits shall terminate upon transfer of the active military person to active military status. If the active military person resumes active status, any funeral establishment, preneed establishment, or crematory shall be required to apply for a new license or permit but shall only be required to pay the renewal fee to issue the new license or permit.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5),(a1); 93B-15(b);
Eff. October 1, 2010.

21 NCAC 34B .0312 MEMBERS REQUIRED BEFORE LICENSING

Before any new burial association can be licensed, the proposed burial association's sponsor must obtain 800 members within six months of the charter date. If, at the end of six months, it is determined that sufficient progress has been made toward obtaining 800 members, then an additional 90 days may be granted.

History Note: Authority G.S. 58-241; 58-241.8;
Eff. February 1, 1976;
Recodified from 04 NCAC 04 .0301 Eff. January 13, 2017.

SECTION .0400 – CONTINUING EDUCATION

Editor's Note: 21 NCAC 34B .0401 - .0405 was recodified from 21 NCAC 34 .0501 - .0505 Eff. February 7, 1991.

21 NCAC 34B .0401 ESTABLISHMENT AND APPROVAL OF COURSES

The Board shall cause at least eight hours of continuing education courses to be offered to the licensees annually, either directly or through other organizations or persons procured for such purpose. The Board shall mail to each licensee for whose benefit the course is offered, at least 15 days prior to the date of enrollment, notice of the course and the amount of any registration fee to be charged.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; November 1, 1994; September 1, 1979.

21 NCAC 34B .0402 REQUIREMENT FOR LICENSE RENEWAL

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5); 150A-11;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Repealed Eff. September 1, 1979.

21 NCAC 34B .0403 REQUIREMENT FOR LICENSE REINSTATEMENT

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5); 150B-11(1);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. September 1, 1979;
Repealed Eff. August 1, 1998.

21 NCAC 34B .0404 CONTINUING EDUCATION CARD

All licensees shall complete a card provided by the Board to certify that the licensee has taken continuing education courses. The form shall require the licensee to furnish the name of the licensee, "in time" and "out time" at the course, the license number, total hours, date, attestation by an authorized official who may be an official of the entity sponsoring the course or a member of the Board or its designated agent, and any other information the Board deems necessary as required by law. The form must be filed with the Board no later than the time when evidence of having taken such courses is required for license renewal or reinstatement.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; September 1, 1979.

21 NCAC 34B .0405 APPLICATION FORM FOR APPROVAL OF COURSE

Applications for approval of a course of continuing education shall be made on forms provided by the Board. The applicant shall furnish the date, name of the organization or person making the application, description of the course, name and credentials of the instructor, and a statement by the applicant of how the course will aid the licensee in serving the public. The form must be filed with the Board, when making application, at least 30 days prior to the date of enrollment established for the course.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. September 1, 1979;
Amended Eff. November 1, 2004; November 1, 1994.

21 NCAC 34B .0406 APPLICATION FORM FOR APPROVAL OF SPONSOR

Applications for approval of a sponsor of continuing education shall be made on forms provided by the Board. The applicant shall furnish the date, name of the organization or person making the application, description of the sponsor and the types of courses it offers as well as its requirements to be an instructor for its courses, and a statement by the applicant of how its courses will aid the licensee in serving the public. The form must be filed with the Board, when making application, at least 90 days prior to the first course the sponsor intends to offer for CE credit.

*History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. July 1, 2005.*

21 NCAC 34B .0407 DEFINITIONS

For purposes of Section .0400, the following definitions shall apply:

- (1) "Accredited sponsor" shall mean an organization whose continuing education offerings have been accredited by the Board.
- (2) "Approved activity" shall mean a specific, individual continuing education activity presented by an accredited sponsor or presented by other than an accredited sponsor if such activity is approved as a continuing education activity under the Rules in this Section by the Continuing Education Committee of the Board.
- (3) "Continuing education" or "CE" is any educational activity accredited by the Board. CE includes educational activities designed principally to maintain or increase the professional competence of licensees or the understanding of the professional responsibilities of licensees.
- (4) "Continuing Education Committee" shall mean the Continuing Education Committee of the North Carolina Board of Funeral Service.
- (5) "Credit hour" means an increment of time of 50 minutes which may be divided into segments of 25 minutes, but no smaller.
- (6) "Inactive licensee" shall mean a licensee of the North Carolina State Board of Funeral Service who is on inactive status.
- (7) "Licensee" shall include any person who is licensed by the Board to practice funeral directing, embalming, or funeral service in the state of North Carolina and whose license is active.
- (8) "Participatory CE" shall mean courses or segments of courses that encourage the participation of attendees in the educational experience through, for example, the analysis of hypothetical situations, role playing, mock trials, roundtable discussions, or debates.
- (9) "Self-study" shall mean the reading of professional articles, journals, magazines, and books or the watching of programs on the topics of funeral directing, embalming and funeral services that will increase the licensee's professional competence and proficiency as a licensee.
- (10) "Sponsor" is any person or entity presenting or offering to present one or more continuing education programs, whether or not an accredited sponsor.
- (11) "Year" shall mean calendar year.
- (12) "Course" shall mean the instructional content of the material being presented.
- (13) "CE Program" shall mean the date, time, and location of the presentation of a CE course.

*History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. July 1, 2005;
Amended Eff. March 1, 2008.*

21 NCAC 34B .0408 CONTINUING EDUCATION PROGRAM

(a) For licensees required to complete CE as a prerequisite to annual license renewal, the five hours of approved CE shall meet the following requirements:

- (1) Up to two hours may be in courses required by the Board. If the Board requires licensees to take a particular required course or courses, the Board shall notify licensees no later than October 1 of the year preceding the calendar year in which the course(s) will be required.
- (2) Licensees may take up to two hours of continuing education each year by computer-based CE approved by the Board as set forth in 21 NCAC 34B .0414.
- (3) Licensees may not receive more than two hours of credit for continuing education courses in preneed each year.
- (4) Licensees may not receive credit hours for taking the same CE course within two years.

(b) A newly admitted active licensee may include as credit hours, which may be carried over to the next succeeding year, any approved continuing education hours earned after that licensee's graduation from mortuary science college.

*History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. July 1, 2005;*

Amended Eff. January 1, 2009.

21 NCAC 34B .0409 COURSE ACCREDITATION STANDARDS

(a) The content of a CE activity must have intellectual or practical content designed to maintain or increase the participant's professional competence and proficiency as a licensee or the participant's understanding of the professional responsibilities of a licensee. The activity shall constitute an organized program course of learning dealing with matters directly related to the practice of funeral directing, embalming, or funeral service. The activity shall include an opportunity for the participants to ask questions of the presenter about its content. Courses that cross academic lines, such as insurance seminars, may be considered for approval by the Board. However, the Board must be satisfied that the content of the activity is directly related to preneed or would otherwise enhance funeral directing and funeral service skills.

(b) Credit may be given for continuing education activities where live instruction is used or mechanically or electronically recorded or reproduced material is used, including videotape or satellite transmitted programs. Subject to the limitations set forth in 21 NCAC 34B .0408(a) and 21 NCAC 34B .0414, credit may also be given for continuing education activities on CD-ROM and on a computer website accessed via the Internet.

(c) Continuing education materials shall be prepared, and activities conducted, by an individual or group able to lead the CE activity and to answer questions from the participants about its content. Examples of individuals and groups able to lead the CE activity and to answer questions from the participants about its content include:

- (1) Funeral professionals licensed by the Board or by the authority of another jurisdiction who are actively engaged full time in a capacity consistent with the individual's license designation for at least three years immediately preceding the date of the CE activity.
- (2) Instructors employed by a program or college of mortuary science in a capacity consistent with the courses of study required as a prerequisite to licensing, as defined in G.S. 90-210.25(a)(1)e1., (2)e1., and (3)e1. and 2.
- (3) Instructors employed by academic institutions in a capacity consistent with the instruction of the courses of study required as a prerequisite to licensing, as defined by G.S. 90-210.25(a)(1)e1., (2)e1., and (3)e1. and 2.

(d) Continuing education activities shall be conducted in a setting physically suitable to the educational activity of the program and equipped with suitable writing surfaces and sufficient space for taking notes.

(e) Thorough, high quality, and carefully prepared, written materials must be distributed to all attendees at or before the time the course is presented. As used in this Paragraph, "thorough, high quality, and carefully prepared written materials" means materials that correspond to the content of the CE activity and are free from errors, including written materials printed from a computer website or CD-ROM, but excluding any materials that refer to a product of a specific manufacturer or to a service offered by a specific provider. The Board may waive the requirement that written materials be provided if written materials would not be suitable or readily available for the CE activity.

*History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. July 1, 2005;
Amended Eff. March 1, 2008.*

21 NCAC 34B .0410 ACCREDITATION OF SPONSORS AND PROGRAMS

(a) Accreditation of Sponsors. An organization desiring accreditation as an accredited sponsor of courses, programs, or other continuing education activities may apply for accredited sponsor status to the Board. The Board shall approve a sponsor as an accredited sponsor if it is satisfied that the sponsor's programs have met the standards set forth in 21 NCAC 34B .0409.

(b) Presumptive Approval for Accredited Sponsors.

- (1) Once an organization is approved as an accredited sponsor, the continuing education programs sponsored by that organization are presumptively approved for credit and no application must be made to the Board for approval. The Board may at any time revoke the accreditation of an accredited sponsor for failure to satisfy the Rules in this Section.
- (2) The Board may evaluate a program presented by an accredited sponsor and, upon a determination that the program does not satisfy the requirements of 21 NCAC 34B .0409, notify the accredited sponsor that any presentation of the same program, the date for which was not included in the announcement required by 21 NCAC 34B .0411(e) below, is not approved for credit. Such notice shall be sent by the Board to the accredited sponsor within 30 days after the receipt of the announcement. The accredited sponsor may request reconsideration of such a decision by submitting a letter of appeal to the Board within 15 days of receipt of the notice of disapproval. The decision by the Board on an appeal is final.

(c) Unaccredited Sponsor Request for Program Approval. Any organization not accredited as an accredited sponsor that desires approval of a course or program shall apply to the Board. The Board shall administer the accreditation of such programs consistent with the provisions of 21 NCAC 34B .0409. Applicants denied approval of a program may request reconsideration of such a decision by submitting a letter of appeal to the Board within 15 days of receipt of the notice of disapproval. The decision by the Board on an appeal is final.

(d) Licensee Request for Program Approval. An active licensee desiring approval of a course or program that has not otherwise been approved shall apply to the Board. Applicants denied approval of a program may request reconsideration of such a decision by submitting a letter of appeal to the Board within 15 days of the receipt of the notice of disapproval. The decision by the Board on an appeal is final.

(e) Program Announcements of Accredited Sponsors. At least 30 days prior to the presentation of a program, an accredited sponsor shall file an announcement, on a form prescribed by the Board, notifying the Board of the dates and locations of presentations of the program, the sponsor's calculation of the CE credit hours for the program, and the cost of the program to attendees.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. July 1, 2005.

21 NCAC 34B .0411 GENERAL COURSE APPROVAL

(a) Mortuary Science College Courses – Courses covering subjects required by G.S. 90-210.25(a)(1)e1., (2)e1., and (3)e1. and 2 that are offered for academic credit by a mortuary science college approved by the Board or accredited by the American Board of Funeral Service Education shall be approved activities unless the course is taken to obtain a funeral director, embalmer, or funeral service license. Computation of CE credit for such courses shall be as prescribed in 21 NCAC 34B .0415. No more than five CE hours in any year may be earned by such courses except in the cases of an inactive licensee who is seeking to earn enough CE credit to return to active status or an individual whose license has lapsed and who is seeking to reinstate the license. No credit is available for mortuary science college courses attended prior to becoming an active licensee of the North Carolina Board of Funeral Service, except in the case of an inactive licensee who is seeking to earn enough CE credits to return to an active status.

(b) Approval – CE activities shall be approved upon the written application of a sponsor, other than an accredited sponsor, or of an active licensee on an individual program basis. An application for the approval of such CE courses and programs shall meet the following requirements:

- (1) The application and supporting documentation, including one complete set of the written materials to be distributed at the course or program, shall be submitted at least 30 days prior to the date on which the course or program is scheduled.
- (2) The application shall be submitted on a form furnished by the Board. The form shall require the applicant to furnish the name and address of the course sponsor, the title, date, length, and location of the course, and any other information the Board deems necessary as required by law.
- (3) The application shall be accompanied by a course outline or brochure that describes the content, identifies the teachers, lists the time devoted to each topic and shows each date and location at which the course or program will be offered.
- (4) The application shall include a calculation of the total number of CE hours using the method prescribed in 21 NCAC 34B .0415.

(c) Course Quality – The application and written materials provided shall reflect that the program to be offered meets the requirements of 21 NCAC 34B .0409. Written materials consisting merely of an outline without citation or explanatory notations shall not be sufficient for approval. Any sponsor, including an accredited sponsor, who expects to conduct a CE activity for which suitable written materials will not be made available to all attendees may obtain approval for that activity only by application to the Board at least 30 days in advance of the presentation showing why written materials are not suitable or readily available for such a program.

(d) Records – Sponsors, including accredited sponsors, shall within 30 days after the course is concluded:

- (1) furnish to the Board a list in alphabetical order, on electronic media if available, of the names of all North Carolina attendees and their North Carolina Board of Funeral Service license numbers;
- (2) furnish to the Board a complete set of all written materials distributed to attendees at the course or program.

(e) Announcement – Accredited sponsors and other sponsors who have approval for courses may include in their brochures or other course descriptions the information contained in the following illustration:

This course [or seminar or program] has been approved by the North Carolina Board of Funeral Service for continuing education credit in the amount of ____ hours. This course is not sponsored by the Board.

(f) Notice - Sponsors not having approval shall make no representation concerning the approval of the course for CE credit by the Board. The Board shall mail a notice of its decision on CE activity approval requests within 15 days of their receipt. Approval thereof shall be deemed if the notice is not mailed within 30 days. This automatic approval will not operate if the sponsor contributes to the delay by failing to provide all information requested by the Board or if the Board notifies the sponsor that the matter has been tabled and the reason therefore.

(g) Facilities - Sponsors must provide a facility conducive to learning with sufficient space for taking notes. Sponsors must also ensure the following requirements are met:

- (1) Access to the facility shall be controlled so that attendees actually attend the entire program or portion of the program for which they are seeking credit. Attendees who are late or who leave early shall not be given credit for the portion of the program that they missed.
- (2) All licensees who attend a program and desire credit for attendance must present their license pocket card to gain admission to the program.
- (3) The individual or organization conducting the continuing education program must use registration sign in/sign out sheets to ensure attendance by all participants.
- (4) The reading of outside material, such as newspapers and magazines, is prohibited during a CE program.
- (5) Cell phones and other disruptive devices must be turned off or switched to a silent mode of operation during instructional periods of the CE program.
- (6) Persons obtaining CE hours for license reinstatement shall be provided a temporary card, valid for one year from the date of issue, from the Board in order to be allowed entrance to CE programs.

(h) Course Materials - In addition to the requirements of 21 NCAC 34B .0411(d) and (f) above, sponsors, including accredited sponsors, and active licensees seeking credit for an approved activity shall furnish upon request of the Board a copy of all materials presented and distributed at a CE course or program.

(i) Non-funeral service Educational Activities - Approval of courses shall not be given for general and personal educational activities. For example, the following types of courses shall not receive approval:

- (1) courses within the normal college curriculum such as English, history, and social studies;
- (2) courses that deal with sales and advertising only and would not further educate a licensee as to his or her product knowledge and development of funeral procedures and management models designed to increase the level of service provided to the consumer.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. July 1, 2005;
Amended Eff. March 1, 2008.

21 NCAC 34B .0412 ACCREDITED SPONSORS

In order to receive designation as an accredited sponsor of courses, programs or other continuing education activities under 21 NCAC 34B .0410(a), the application of the sponsor must meet the following requirements:

- (1) The application for accredited sponsor status shall be submitted on a form prescribed by the Board. The form shall require the applicant to furnish the name and address of the sponsor, the contact person within the organization, and any other information the Board deems necessary as required by law.
- (2) The application shall be accompanied by course outlines or brochures that describe the content, identify the instructors, list the time devoted to each topic, show each date and location at which three programs have been sponsored in each of the last three consecutive years, and enclose the actual course materials.
- (3) The application shall include a detailed calculation of the total CE hours specified in each of the programs sponsored by the organization.
- (4) The application shall reflect that the previous programs offered by the organization in continuing education would have met the standards set forth in 21 NCAC 34B .0409.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. July 1, 2005.

21 NCAC 34B .0413 ACCREDITATION OF PRERECORDED PROGRAMS AND LIVE PROGRAMS BROADCAST TO REMOTE LOCATIONS BY TELEPHONE, SATELLITE, OR VIDEO CONFERENCING EQUIPMENT

- (a) A licensee may receive up to two hours of CE credit each year for attendance at, or participation in, a presentation where prerecorded material is used.
- (b) A licensee may receive credit for participation in a live presentation which is simultaneously broadcast by telephone, satellite, or video conferencing equipment. The licensee may participate in the presentation by listening to or viewing the broadcast from a location that is remote from the origin of the broadcast.
- (c) A licensee attending a prerecorded presentation is entitled to credit hours if:
- (1) the presentation from which the program is recorded would, if attended by an active licensee, be an accredited course; and
 - (2) all other conditions imposed by the rules in this Subchapter are met.
- (d) A licensee attending a presentation broadcast by telephone, satellite, or video conferencing equipment is entitled to credit if:
- (1) the live presentation of the program would, if attended by a licensee, be an accredited course;
 - (2) there is a question and answer session with the presenter or presenters subject to the limitations set forth in 21 NCAC 34B .0415(b)(5); and
 - (3) all other conditions imposed by the rules in this Subchapter are met.
- (e) To receive approval for attendance at programs described in Paragraphs (a) and (b) of this Rule, the following conditions must be met:
- (1) Unless the entire program was produced by an accredited sponsor, the person or organization sponsoring the program must receive advance approval and accreditation from the Board;
 - (2) The person or organization sponsoring the program must have a method for recording and verifying attendance. Attendance at a telephone broadcast may be verified by assigning a personal identification number to a licensee. The person or organization sponsoring the program must forward a copy of the record of attendance of active licensees to the Board within 30 days after the presentation of the program is completed. Proof of attendance may be made by the verifying person on a form provided by the Board;
 - (3) Unless inappropriate for the particular course, detailed papers, manuals, study materials, or written outlines are presented to the persons attending the program which only pertain to the subject matter of the program. Any materials made available to persons attending the original or live program must be made available to those persons attending the prerecorded or broadcast program who desire to receive credit under the rules in this Section; and
 - (4) A room suitable for viewing the program and taking notes must be available.
- (f) A minimum of five licensees must physically attend the presentation of a prerecorded program in the same location. This requirement does not apply to participation from a remote location in the presentation of a live broadcast by telephone, satellite, or video conferencing equipment.
- (g) **EXAMPLES:**
- EXAMPLE (1): Licensee X attends a videotape seminar sponsored by an accredited sponsor. If a person attending the program from which the videotape is made would receive credit, Licensee X is also entitled to receive credit, if the additional conditions under this Rule are also met.
- EXAMPLE (2): Licensee Y desires to attend a videotape program. However, the proposed videotape program (a) is not presented by an accredited sponsor, and (b) has not received individual course approval from the Board. Licensee Y shall not receive any credit hours for attending that videotape presentation.
- EXAMPLE (3): Licensee Z attends a videotape program. The presentation of the program from which the videotape was made has already been held and approved by the Board for credit. However, no person is present at the videotape program to record attendance. Licensee Z shall not obtain credit for viewing the videotape program unless it is viewed in the presence of a person who is not attending the videotape program for credit and who verifies the attendance of Licensee Z and of other licensees at the program. All other conditions of this Rule must also be met.
- EXAMPLE (4): Licensee A listens to a live telephone seminar using the telephone in the conference room of her funeral establishment. To record her attendance, Licensee A was assigned a person identification number (PIN) by the seminar sponsor. Once connected, Licensee A punched in the PIN number on her touch tone phone and her attendance was recorded. The seminar received individual course approval from the Board. Licensee A shall receive credit if the additional conditions under this Rule are also met.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. July 1, 2005;
Amended Eff. September 1, 2009; March 1, 2008.

21 NCAC 34B .0414 ACCREDITATION OF COMPUTER-BASED CE

(a) Effective for courses attended on or after January 1, 2009, a licensee may receive up to two hours of credit each year for participation in a course on CD-ROM or on-line. A CD-ROM course is an educational seminar on a compact disk that is accessed through the CD-ROM drive of the user's personal computer. An on-line course is an educational seminar available on a provider's website reached via the Internet.

(b) A licensee may apply up to two credit hours of computer-based CE to a CE deficit from a preceding calendar year. A computer-based CE credit hour applied to a deficit from a preceding year will be included in calculating the maximum of two hours of computer-based CE allowed in the preceding calendar year. A licensee may carry over to the next calendar year no more than two credit hours of computer-based CE pursuant to 21 NCAC 34B .0408. A credit hour carried-over pursuant to 21 NCAC 34B .0408 shall not be included in calculating the two hours of computer-based CE allowed in any one calendar year.

(c) To be accredited, a computer-based CE course must meet all of the conditions imposed by the rules in this Subchapter, except where otherwise noted, and be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter or other participants.

(d) The sponsor of an on-line course must have a reliable method for recording and verifying attendance. The sponsor of a CD-ROM course must demonstrate that there is a reliable method for the user or the sponsor to record and verify participation in the course. A participant may log on and off of a computer-based CE course provided the total time spent participating in the course is equal to or exceeds the credit hours assigned to the program. A copy of the record of attendance must be forwarded to the Board within 30 days after a licensee completes his or her participation in the course.

(e) After approval of a computer-based CE course, the sponsor may replay the computer-based CE course indefinitely until any change is made to the course content. Any modification to an approved computer-based CE course shall require the sponsor to submit a new application for approval but the sponsor may continue to show the previously approved version of the course.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. July 1, 2005;
Amended Eff. January 1, 2009; March 1, 2008.

21 NCAC 34B .0415 COMPUTATION OF CREDIT

(a) Computation Formula - CE and professional responsibility hours shall be computed by the following formula:

Sum of the total minutes of actual instruction divided by 50 = Total Hours.

For example, actual instruction totaling 175 minutes would equal 3.5 hours toward CE.

(b) Actual Instruction - Only actual education shall be included in computing the total hours of actual instruction. The following shall not be included:

- (1) introductory remarks;
- (2) breaks;
- (3) business meetings;
- (4) speeches in connection with banquets or other events which are primarily social in nature;
- (5) question and answer sessions at a ratio in excess of 15 minutes per CE hour and programs less than 30 minutes in length provided, however, that the limitation on question and answer sessions shall not limit the length of time that may be devoted to participatory CE.

(c) Teaching - As a contribution to professionalism, credit may be earned for teaching in an approved continuing education activity. Presentations accompanied by written materials approved under this Subchapter shall qualify for CE credit on the basis of three hours of credit for each 50 minutes of presentation. Repeat presentations qualify for one-half of the credits available for the initial presentation. For example, an initial presentation of 50 minutes would qualify for three hours of credit while a subsequent presentation of the same material would qualify the instructor for 1.5 hours of credit.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);
Eff. December 1, 2004.

SECTION .0500 - OUT-OF-STATE LICENSEES

Editor's Note: 21 NCAC 34B .0501 - .0510 was recodified from 21 NCAC 34 .0601 - .0610 Eff. February 7, 1991.

21 NCAC 34B .0501 APPLICATION FOR LICENSE

Applications by out-of-state licensees for licenses pursuant to G.S. 90-210(b)(1) shall be made upon forms to be furnished by the Board. The application must be verified by the applicant and filed with the Board.

*History Note: Authority G.S. 90-210.23(a); 90-210.25(b)(1); 150B-11(1);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. September 1, 1979.*

21 NCAC 34B .0502 APPLICATION FORM FOR LICENSE BY OUT-OF STATE LICENSEES

Applications by an out-of-state licensee for a North Carolina license pursuant to G.S. 90-210.25(b)(1) shall be made on forms provided by the Board. The form shall require the applicant to furnish the applicant's photograph, name, address, and biographical data; license applied for; name of the jurisdiction where licensed and the kinds of licenses held; length of continuous practice in the other jurisdiction where the applicant is licensed; verification by the applicant; and any other information the Board deems necessary as required by law. The form shall require the licensing board of the other jurisdiction to certify that the applicant is licensed and in good standing in that jurisdiction and to furnish the Board with the name of the applicant, licenses held and dates granted, the name and address of the Board in such other jurisdiction, verification by the Secretary or other official of such other board, and any other information the Board deems necessary as required by law. An affidavit that the applicant has continuously practiced the profession in the other jurisdiction for at least three years immediately preceding an application for a North Carolina license shall be required. The affiant shall be personally acquainted with the applicant and shall furnish the name and address of the affiant, the name of the applicant, the length of time the affiant has known the applicant, the length of the applicant's continuous practice, verification, and any other information the Board deems necessary as required by law. Information pertaining to the applicant's length of practice is not required if the applicant is licensed in a jurisdiction having licensing requirements substantially similar to those of North Carolina. Three affidavits of the moral character of the applicant submitted by three persons, in compliance with G.S. 90-210.26, must accompany the application.

*History Note: Authority G.S. 90-210.23(a); 90-210.25(b)(1);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; September 1, 1979.*

- 21 NCAC 34B .0503 AFFIDAVIT OF STATE ENDORSEMENT**
- 21 NCAC 34B .0504 AFFIDAVIT OF STATE ENDORSEMENT**
- 21 NCAC 34B .0505 RECOMMENDATIONS BY LICENSEE FOR RECIPROCAL LICENSURE**
- 21 NCAC 34B .0506 VERIFICATION OF PRACTICE**

*History Note: Authority G.S. 90-210.23(a); 90-210.25(b); 150A-11;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Repealed Eff. September 1, 1979.*

21 NCAC 34B .0507 COURTESY CARDS

Applications by out-of-state licensees for courtesy cards pursuant to G.S. 90-210.25(b)(3) shall be made upon forms to be furnished by the Board. Such cards shall be issued by license category corresponding to the license held by the applicant, shall be non-transferable, and shall be renewable from year to year. A courtesy card shall expire and terminate upon the suspension, revocation, forfeiture, expiration, or other termination of the holder's license issued by the licensing board of the other jurisdiction, or on the 31st day of December, whichever shall first occur. The holder of

a courtesy card shall be subject to the provisions of G.S. 90-210.25(e). The application must be verified by the applicant and the licensing board of the other jurisdiction and filed with the Board.

History Note: Authority G.S. 90-210.23(a); 90-210.25(b)(3); 150B-11(1);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. September 1, 1979.

21 NCAC 34B .0508 APPLICATION FORM FOR COURTESY CARD

Applications for a courtesy card shall be made on forms provided by the Board. The applicant shall furnish the applicant's photograph, name, address, and biographical data; courtesy card applied for, by license category; name and address of the licensing board where the applicant is licensed; the kind, license number, expiration date of licenses presently held; an agreement that the applicant will obey North Carolina statutes and rules governing funeral service; verification by the applicant; certification by the Secretary or other official of the licensing board of the other jurisdiction that the information concerning the applicant's licensure is correct; and any other information the Board deems necessary as required by law.

History Note: Authority G.S. 90-210.23(a); 90-210.25(b)(3);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; August 1, 1988; September 1, 1979.

21 NCAC 34B .0509 COURTESY CARD FORM

History Note: Authority G.S. 90-210.23(a); 90-210.25(b)(3);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. August 1, 1988; September 1, 1979;
Repealed Eff. November 1, 1994.

21 NCAC 34B .0510 COURTESY CARD RENEWAL FORM

Applications for annual renewal of a courtesy card shall be made on forms provided by the Board. The form shall require the applicant to furnish the type of license privileges sought, changes to the applicant's name, address, telephone, place of employment, license expiration date, the signature of the applicant, affirmation that the applicant will abide by North Carolina law, verification, and any other information the Board deems necessary as required by law.

History Note: Authority G.S. 90-210.23(a); 90-210.25(b)(3);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; September 1, 1979.

SECTION .0600 - FUNERAL ESTABLISHMENTS

Editor's Note: 21 NCAC 34B .0601 - .0615 was recodified from 21 NCAC 34 .0701 - .0715 Eff. February 7, 1991.

21 NCAC 34B .0601 DISTINCTION BETWEEN ESTABLISHMENT AND CHAPEL 21 NCAC 34B .0602 MANAGER OF ESTABLISHMENT

History Note: Authority G.S. 90-210.23(a),(e); 90-210.20(h); 90-210.25(d); 150B-11;
Eff. February 1, 1976;

Readopted Eff. September 27, 1977;
Amended Eff. September 1, 1979;
Repealed Eff. August 1, 1988.

21 NCAC 34B .0603 MANAGER MAY MANAGE TWO ESTABLISHMENTS
21 NCAC 34B .0604 PARTNER OR OFFICER AS MANAGER

History Note: Authority G.S. 90-210.23(a),(e); 90-210.25(d); 150A-11;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Repealed Eff. September 1, 1979.

21 NCAC 34B .0605 PERMITS: TRANSFER OF OWNERSHIP OF ESTABLISHMENT

Funeral establishment permits shall not be transferable. When the ownership of a funeral establishment changes, or when there has been a transfer of a majority of the common stock of the corporation owning a funeral establishment, a new application for an establishment permit shall be made to the Board within 30 days of said change of ownership or transfer. The applicable fee shall accompany the said application, as in the case of initial applications.

History Note: Authority G.S. 90-210.23(a),(e); 90-210.25(d)(5); 150B-11(1);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. September 1, 1979.

21 NCAC 34B .0606 PERMIT FEES
21 NCAC 34B .0607 EXPIRATION AND RENEWAL OF PERMITS

History Note: Authority G.S. 90-210.23(a); 90-210.25(d); 150A-11;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Repealed Eff. September 1, 1979.

21 NCAC 34B .0608 APPLICATION FORM FOR FUNERAL ESTABLISHMENT PERMIT

Applications for a new funeral establishment permit shall be made on forms provided by the Board. The applicant shall furnish the name and address of the establishment; the name or names of the owner or owners; the ownership of the stock if it is owned by a corporation; a description of the preparation room; size of the reposing room; names and license numbers of all part-time and full-time licensees employed by the establishment; the name and license number of the manager; verification by the manager; and any other information the Board deems necessary as required by law.

History Note: Authority G.S. 90-210.23(a),(d),(e); 90-210.25(d); 90-210.27A;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. December 1, 2004; August 1, 1988; September 1, 1979.

21 NCAC 34B .0609 FUNERAL ESTABLISHMENT PERMIT FORM

History Note: Authority G.S. 90-210.23(a); 90-210.25(d);
Eff. February 1, 1976;

Readopted Eff. September 27, 1977;
Amended Eff. August 1, 1988;
Repealed Eff. November 1, 1994.

21 NCAC 34B .0610 FUNERAL ESTABLISHMENT PERMIT RENEWAL FORM

All funeral establishments holding a funeral establishment permit shall annually submit a renewal application on forms provided by the Board. The applicant shall furnish the name and address of the establishment; ownership of the establishment; license numbers of any owner, partner, officers of the business entity owning establishment; licensees employed by the funeral establishment; name and license number of the manager of the funeral establishment; and any other information the Board deems necessary as required by law. The form must be filed no later than February 1 of each year.

History Note: Authority G.S. 90-210.23(a); 90-210.25(d)(3);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. December 1, 2004; September 1, 1979.

21 NCAC 34B .0611 PART-TIME EMPLOYEES AND INDEPENDENT CONTRACTORS

The Board may require part-time employees and independent contractors performing embalming or funeral directing, as defined by G.S. 90-210.20(e) and (f), for funeral establishments, to sign affidavits or to supply such other assurance or proof as the Board deems necessary in order for the Board to be satisfied that such persons are in fact performing such services for a funeral establishment which, in its application for an establishment permit, has set forth the name or names of one or more such persons as performing such services for the establishment.

History Note: Authority G.S. 90-210.23(a),(d),(e); 90-210.25(d); 150B-11(1);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. August 1, 1988.

21 NCAC 34B .0612 PART-TIME AND INDEPENDENT CONTRACTORS AFFIDAVIT

Upon request of the Board, part-time employees and independent contractors shall submit an affidavit certifying to the Board, as provided in Rule .0611 of this Section, that the person signing it is performing services for one or more funeral establishments. The affiant shall file the affidavit on forms provided by the Board and shall furnish the names and locations of the establishments, a certification of the licensee that he will notify the Board when he ceases to perform such services, the signature of the licensee, verification, and any other information the Board deems necessary as required by law.

History Note: Authority G.S. 90-210.23(a),(d),(e); 90-210.25(d);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 2004; July 1, 1991; August 1, 1988.

21 NCAC 34B .0613 DISCLOSURE STATEMENTS

One copy of each disclosure statement, as required by G.S. 90-210.25(e), shall be kept by the funeral establishment for a period of two years and shall, during said period of time, be subject to inspection by the Board, its inspector or other duly authorized representative.

History Note: Authority G.S. 90-210.23(a),(d),(e); 90-210.25(e); 150B-11(1);
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. September 1, 1979.

21 NCAC 34B .0614 FREE AMBULANCE SERVICE AS SOLICITATION

History Note: Authority G.S. 90-210.23(a); 90-210.25(e)(2)c; 150A-11;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Repealed Eff. September 1, 1979.

21 NCAC 34B .0615 FUNERAL ESTABLISHMENT INSPECTION FORM

The findings of all funeral establishment inspections shall be recorded and filed on report forms provided by the Board. The funeral establishment shall furnish the name and address of the establishment; names of the owner, manager, licensees and resident trainees; verification by the funeral establishment that any violations have been corrected, the date of the verification, and other information the Board deems necessary as required by law. Verifications by an official of the funeral establishment that any violations have been corrected must be received by the Board no later than seven days after the date for compliance.

History Note: Authority G.S. 90-210.23(a),(d),(e); 90-210.24;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. January 1, 2009; November 1, 2004.

21 NCAC 34B .0616 BODY IDENTIFICATION TAGS

Unused body identification tags shall be kept on the premises of each funeral establishment at all times and are subject to inspection by the Board and its authorized agents.

History Note: Authority G.S. 90-210.23(a),(e); 90-210.29A;
Eff. September 1, 2009.

21 NCAC 34B .0617 PRACTICING DURING DISASTERS

(a) Upon the declaration of a state of emergency, as provided in G.S. 166A-19.20, the Board may waive, for a period not to exceed 120 days following the rescission of the declaration of a state of emergency, any requirement of G.S. 90-210.27A and 21 NCAC 34B .0702-.0706. Only those funeral establishments impacted by and located in a county in which the state of emergency has been declared shall be eligible for a waiver.

(b) Any funeral establishment seeking a waiver pursuant to this Rule shall request the same on a form prescribed by the Board, to include the following:

- (1) name and permit number of the funeral establishment making the waiver request;
- (2) a description of the circumstances giving rise to the request;
- (3) a plan for correcting any violations of G.S. 90-210.27A and 21 NCAC 34B .0702-.0706 caused by the emergency; and
- (4) the anticipated time frame that the funeral establishment will return to full compliance with G.S. 90-210.27A and 21 NCAC 34B .0702-.0706.

(c) A funeral establishment seeking to extend a waiver in excess of 120 days shall provide a written request and explanation to the Board for its consideration. It shall be within the discretion of the Board to grant or deny an extension request, based on the following criteria:

- (1) the degree of risk of harm, if any, that the continued non-compliance poses to the general public;
- (2) the efforts undertaken by the funeral establishment towards compliance with the plan submitted to the Board at the time of its initial waiver request; and
- (3) the circumstances surrounding the funeral establishment's request for additional time.

History Note: Authority G.S. 90-210.23(d),(e); 90-210.25(d); 90-210.27A;
Eff. September 1, 2017.

21 NCAC 34B .0618 PRACTICING DURING EMERGENCIES

(a) When a funeral establishment experiences an emergency occurrence or imminent threat of damage, injury, or loss of property resulting from a natural or man-made incident, the Board may waive, for a period not to exceed 120 days, any requirement of G.S. 90-210.27A and 21 NCAC 34B .0702-.0706. The funeral establishment may continue to operate if it has provided evidence that the emergency does not pose an immediate threat to human life, an immediate threat of serious physical injury, or an immediate threat of serious adverse health effects.

(b) Any funeral establishment seeking a waiver pursuant to this Rule shall request the same on a form prescribed by the Board, to include the following:

- (1) name and permit number of the funeral establishment making the waiver request;
- (2) a description of the circumstances giving rise to the request;
- (3) a plan for correcting any violations of G.S. 90-210.27A and 21 NCAC 34B .0702-.0706 caused by the emergency; and
- (4) the anticipated time frame that the funeral establishment will return to full compliance with G.S. 90-210.27A and 21 NCAC 34B .0702-.0706.

(c) A funeral establishment seeking to extend a waiver in excess of 120 days shall provide a written request and explanation to the Board for its consideration. It shall be within the discretion of the Board to grant or deny an extension request, based on the following criteria:

- (1) the degree of risk of harm, if any, that the continued non-compliance poses to the general public;
- (2) the efforts undertaken by the funeral establishment towards compliance with the plan submitted to the Board at the time of its initial waiver request; and
- (3) the circumstances surrounding the funeral establishment's request for additional time.

History Note: Authority G.S. 90-210.23(d),(e); 90-210.25(d); 90-210.27A;
Eff. September 1, 2017.

SECTION .0700 - PREPARATION OF DEAD BODIES

Editor's Note: 21 NCAC 34B .0701 - .0705 was recodified from 21 NCAC 34 .0801 - .0805 Eff. February 7, 1991.

21 NCAC 34B .0701 PREPARATION ROOM: REQUIREMENTS

History Note: Authority G.S. 90-210.23(a),(d),(e); 150A-11;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Repealed Eff. September 1, 1979.

21 NCAC 34B .0702 STORAGE IN PREPARATION ROOM

The only articles and materials which shall be permitted to be stored in the preparation room are supplies, materials and equipment actually maintained for use in embalming.

History Note: Authority G.S. 90-210.23(a),(d),(e); 90-210.27A;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. September 1, 1979.

21 NCAC 34B .0703 DISPOSAL OF REFUSE: VENTILATION

Every preparation room shall be provided with proper and convenient receptacles for refuse, bandages, cotton and other waste materials and supplies, which shall be properly disposed of at the conclusion of each case, to the end that the public health may thereby be protected. Every preparation room shall comply, with respect to ventilation, with state

and local laws, ordinances and regulations. No obnoxious or deleterious odors shall be allowed to remain therein nor to enter into any other part of the premises of the funeral establishment or into any adjoining premises.

History Note: Authority G.S. 90-210.23(a),(d),(e); 90-210.27A;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. July 1, 1991; September 1, 1979.

21 NCAC 34B .0704 SANITATION IN PREPARATION OF BODIES

In the safeguard of the public health, every person while engaged in the actual preparation of a dead human body shall be attired in a clean and sanitary smock or gown and shall wear protective gloves. When a smock or gown has been worn in the preparation of a body, it shall not be worn again before being laundered. No sheets, linens, materials, or supplies of any kind, which shall have come in contact with a dead human body, shall be used more than once without being laundered. Such materials shall be kept in a covered container until laundered. All instruments and appliances used in the preparation of a body shall be thoroughly cleansed and sterilized immediately at the conclusion of each individual case and stored in an enclosed cabinet or drawer.

History Note: Authority G.S. 90-210.23(a),(d),(e); 90-210.27A;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. September 1, 1979.

21 NCAC 34B .0705 EMBALMING MATERIALS

History Note: Authority G.S. 90-210.23(a),(d),(e); 150A-11;
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Repealed Eff. September 1, 1979.

21 NCAC 34B .0706 REGISTRATION OF EMBALMING FACILITY LOCATED OUTSIDE OF A FUNERAL ESTABLISHMENT

- (a) An embalming facility located outside a funeral establishment shall comply with the requirements of G.S. 90-210.27A(a)(1) through (8) and all other applicable federal, state, or local laws and regulations.
- (b) An embalming facility located outside a funeral establishment shall be registered either to a funeral establishment holding a permit from the Board or to a funeral service or embalmer licensee of the Board. Each embalming facility must be managed by an embalmer or funeral service licensee. A person managing an embalming facility may also manage the funeral establishment location registering the facility.
- (c) Applications to register an embalming facility located outside a funeral establishment shall be made on forms provided by the Board. The applicant shall furnish the address and telephone number of the facility; a description of the preparation room; the names and license numbers of all part-time and full-time licensees employed by the facility; the person or business entity owning the facility; the person managing the facility; a certification that the facility will not be used for any other purpose other than embalming or used for activities requiring a funeral establishment permit; and any other information the Board deems necessary as required by law. The applicant shall verify the contents of the application before a notary public.
- (d) Upon Board approval of the registration, the embalming facility may be used to embalm dead human bodies and shall not be used as a public accommodation. The owner of the facility must obtain a funeral establishment permit under G.S. 90-

210.25(d) if the facility is to be held out to the public, used as a public accommodation, or used to engage in any other activity defined as the practice of funeral service under G.S. 90-210.20(k) other than embalming.

History Note: Authority G.S. 90-210.20(f),(h),(k); 90-210.23(a),(e); 90-210.25(d1); 90-210.27A;
Eff. September 1, 2009.

SUBCHAPTER 34C - CREMATORIES

SECTION .0100 – GENERAL PROVISIONS

21 NCAC 34C .0101 ELECTION TO CREMATORY AUTHORITY

(a) Definitions. As used in this Rule:

- (1) "Crematory operator" shall have the same meaning as the term "crematory licensee" defined in G.S. 90-210.121(12).
- (2) "Return official envelope" shall mean the envelope in which the crematory operator places a completed ballot for election to the Crematory Authority to return to the Board.
- (3) "Seat subject to election" means the seat held by a member of the Crematory Authority whose term expires December 31 of the calendar year in which the election is held.

(b) The nomination and election of members of the Crematory Authority shall be conducted as follows:

- (1) Every crematory operator with a current North Carolina license shall be eligible to vote. The list of crematory operators with a current North Carolina license at the time ballots are prescribed shall constitute the registration list for elections. The Board shall keep an official list of all crematory operators in its office. The Board shall post a list of crematory operators indicating whether a return official envelope has been returned during each election.
- (2) Nomination of candidates for election shall be made to the Board by a written petition pursuant to 21 NCAC 34A .0103. Petitions for nomination must be filed with the Board between July 1 and August 1 of the calendar year preceding the expiration of the term of the seat subject to election. Any candidate who is nominated may withdraw his or her name after filing written notice with the Board prior to the closing of the polls in any election.
- (3) The following procedures shall apply to ballots for election to the Crematory Authority:
 - (A) The Board shall prescribe ballots and determine the time allowed for voting at its first meeting after nominations have closed. The ballots shall contain a listing of the nominees in alphabetical order; instructions for voting; a method of identification; and other information the Board deems necessary as required by law.
 - (B) At the same meeting where ballots are prescribed, the Board shall designate a day for ballots to be mailed; a deadline for the latest day and time for ballots to be returned; and the day and hour when ballots will be canvassed and counted. The Board shall set the deadline for ballots to be returned to be at least 10 days after the time ballots are mailed.
 - (C) The Board shall mail to each crematory operator a ballot; a return official envelope; a notice designating the latest day and hour for ballots to be received by the Board; a notice of when ballots will be canvassed and counted; and other information the Board deems necessary as required by law. The return official envelope shall be addressed to the Board; shall bear a serial number; and shall have printed on the left portion of its face the following:

"Serial No. of Envelope _____
Signature of Voter _____
Address of Voter _____

(Note: The enclosed ballot is not valid unless the signature of the voter is on this envelope.)"

- (4) Ballots shall be canvassed publicly at the designated day and hour. Any eligible voter may be present. No ballot shall be canvassed unless it has been delivered in a sealed return official envelope to the Board by hand or by U.S. mail before the latest day and hour designated by the ballot for receipt.
- (5) Ballots shall be counted as follows:
 - (A) All return official envelopes shall be displayed to the persons present. Any person present may challenge the qualification of the voter whose signature appears on the return official envelope or the validity of the return official envelope. Any challenged return official envelope shall be set aside, and the Board may hear the challenge either immediately or after all unchallenged ballots have been counted.
 - (B) After all return official envelopes have been displayed, the Board shall open all unchallenged return official envelopes, extract the ballot without showing its marking as much as possible, and separate each ballot from its return official envelope.
 - (C) After all ballots have been separated, the Board shall display all ballots. No ballot shall be valid if it is marked for more nominees than there are positions to be filled in that election;

\provided that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choice or choices from the ballot. Any person present may challenge the validity of the ballot only on the grounds of defects appearing on the face of the ballot. The Board may hear the challenge either immediately or after all unchallenged ballots have been counted.

- (D) After all ballots have been displayed, all unchallenged ballots shall be counted, and all remaining challenges shall be resolved by the Board. The Board shall count the number of votes cast for each candidate and the total number of votes cast. If a candidate dies or withdraws his or her nomination before polls are closed in any election, he or she shall be eliminated from the contest, and any votes cast for him or her shall be disregarded and shall not count toward the total number of votes cast.
- (6) The following procedures shall apply to fill all seats subject to election:
 - (A) To determine a majority of votes cast when there is one seat subject to election, the total number of votes cast for all candidates shall be divided by two, and any candidate receiving a number of votes exceeding one half of the total number of votes cast shall be deemed to have received a majority of votes cast and shall be deemed elected. If no candidate receives a majority of votes cast, the candidate receiving the highest vote total shall be deemed elected.
 - (B) To determine the majority of votes cast when there are two seats subject to election, the total number of votes cast for all candidates shall be divided by four, and any candidate receiving a number of votes exceeding this sum shall be deemed to have received a majority of votes cast. Any candidate receiving a majority of votes cast shall be deemed elected, but if more than two candidates receive a majority of votes cast, the candidates receiving the two highest vote totals shall be deemed elected. If no candidate receives a majority of votes cast, the candidate receiving the highest vote total shall be deemed elected. If one candidate has been deemed elected but one seat remains vacant because no other candidate received a majority of votes cast, the candidate receiving the highest vote total among candidates who did not receive a majority of votes cast shall be deemed elected.
 - (C) In any election where a candidate was deemed elected but failed to receive a majority of votes cast, the candidate who received the next highest vote total but was not elected may file a written petition requesting a second election within ten days after the first election. The second election shall be between the petitioner and the candidate who was deemed elected but did not receive a majority of votes cast. The procedures in paragraphs (b)(1) through (6) of this Rule shall apply to the second election except where inconsistent with this subparagraph. The candidate receiving the majority of votes cast in the second election shall be deemed elected.
 - (D) If there is a tie vote between candidates in any election, the tie shall be resolved by a vote of the Board. If there is a tie after a vote of the Board, the President of the Board may break the tie.
 - (E) If, after nominations have closed, there is only one candidate for each seat subject to election, the Board shall declare the candidate or candidates elected without holding an election. If, after nominations have closed, there is no candidate for a seat subject to election or if a candidate receiving a majority of votes cast dies or withdraws after the election but before taking office, the Board shall fill the position by majority vote.
- (7) Each new member shall take office on the first day of his or her term unless the election to the Crematory Authority has not completed by the beginning of the term, in which case the new member shall take office immediately after the election has been completed.
- (8) If a member of the Board is nominated for election to the Crematory Authority and does not withdraw his or her name, he or she shall be disqualified from all matters pertaining to that election, and the remaining members of the Board shall proceed without his or her participation.
- (9) The Board shall keep the voting records required by 21 NCAC 34A .0104 for a period of six months following the election.

*History Note: Authority G.S. 90-210.122(c); 90-210.134(a);
Eff. July 1, 1991;
Amended Eff. July 1, 2004;*

*Temporary Amendment Eff. June 30, 2005;
Amended Eff. April 1, 2006.*

21 NCAC 34C .0102 FORM OF DOCUMENTS

When any provision of Article 13F, Chapter 90, of the North Carolina General Statutes or any rule in this Subchapter requires a crematory licensee to obtain any death certificate, report, authorization, waiver, statement or other document prior to cremation, it shall be deemed that such requirements are complied with if the crematory licensee receives the applicable document or documents, in the time specified, in the form of the original, a photocopy or by facsimile transmission.

*History Note: Authority G.S. 90-210.127; 90-210.134(a);
Eff. July 1, 1991;
Amended Eff. July 1, 2004.*

21 NCAC 34C .0103 APPLICATION FORM FOR CREMATORY LICENSE

All applications for a crematory license shall be made on forms provided by the Board. The application shall state the name of the applicant; address; type of business entity; location of crematory; description of crematory, facilities and equipment; name and address of each crematory technician; name and address of the crematory manager; any criminal convictions of the applicant and manager; and other information the Board deems necessary as required by law. Three affidavits of the moral character of the owners, partners, or officers and of the manager in compliance with G.S. 90-210.26 shall accompany the application.

*History Note: Authority G.S. 90-210.123; 90-210.134(a);
Eff. July 1, 1991;
Amended Eff. August 1, 2004.*

21 NCAC 34C .0104 CREMATORY LICENSE CERTIFICATE

The Board shall issue each crematory licensee a certificate for a crematory upon demonstrating that all requirements for a crematory license have been satisfied. All crematory license certificates shall be issued on certificate forms provided by the Board.

*History Note: Authority G.S. 90-210.123; 90-210.134(a);
Eff. July 1, 1991;
Amended Eff. August 1, 2004.*

21 NCAC 34C .0105 CREMATORY INSPECTION FORM

The findings of all crematory inspections shall be recorded and filed on report forms provided by the Board. The crematory licensee shall furnish the name and address of the crematory, names of the owner and manager, acknowledgement of the findings of the inspector, the date for compliance, verification by the crematory licensee that any violations have been corrected, the date of the verification, and other information the Board deems necessary as required by law. Verifications by the crematory licensee that any violations have been corrected must be received by the Board no later than seven days after the date for compliance.

*History Note: Authority G.S. 90-210.123; 90-210.134(a);
Eff. July 1, 1991;
Amended Eff. August 1, 2004.*

SECTION .0200 - EQUIPMENT AND PROCESSING

21 NCAC 34C .0201 HOLDING FACILITY; CREMATION UNIT; PROCESSOR

Every crematory shall have the following:

- (1) A holding facility of suitable size to accommodate all human remains which are retained and awaiting cremation.
- (2) A commercially-manufactured cremation unit, within the crematory, made specifically for the cremation of human remains, meeting the following minimum standards:

- (a) An ash collection pan to minimize commingling of cremated remains of one human remains with another.
- (b) A hearth or floor without depressions so as to minimize commingling of cremated remains of one human remains with another.
- (c) A door safety switch to stop the burner operation when the front charging door is opened.
- (d) A pollution monitoring system to monitor and detect smoke when the density exceeds applicable federal and state standards, whereupon the system will automatically stop the burner operation on a time setting of not less than three minutes.
- (e) Approval by Underwriters Laboratory or a comparable testing agency.
- (3) A commercially-manufactured processor, within the crematory, made specifically for the pulverization of cremated remains, meeting the following minimum standards:
 - (a) Capable of consistently processing cremated remains to unidentifiable dimensions.
 - (b) A dust-resistant processing chamber.
 - (c) An exterior surface made of easily cleaned, non-corrosive material.

History Note: Authority G.S. 90-210.41(9),(12); 90-210.45(d),(e); 90-210.50(a);
 Eff. July 1, 1991;
 Recodified from Rule .0202 Eff. July 7, 1992.

21 NCAC 34C .0202 REFRIGERATION

Unembalmed human remains retained in the custody of a crematory licensee for more than 24 hours prior to cremation shall be kept in a refrigeration unit. Crematory licensees shall have a refrigeration unit, capable of storing at least three adult human bodies, in the holding facility. Each refrigeration unit required by this Rule shall meet the following minimum standards:

- (1) Capable of maintaining an interior temperature of 40 degrees Fahrenheit while loaded with the maximum number of bodies for which it is designed.
- (2) Sealed concrete, stainless steel, galvanized, aluminum or other easily cleaned flooring in walk-in units.
- (3) Stainless steel, aluminum or other non-corrosive and easily cleaned materials for the remainder of the interior of all units.

History Note: Authority G.S. 90-210.121(9),(12); 90-210.134(a);
 Eff. July 1, 1991;
 Recodified from Rule .0201 Eff. July 7, 1992;
 Amended Eff. July 1, 2004.

21 NCAC 34C .0203 PULVERIZATION
21 NCAC 34C .0204 CREMATION CONTAINERS

History Note: Authority G.S. 90-210.121(8),(9); 90-210.125(e); 90-210.134(a);
 Eff. July 1, 1991;
 Amended Eff. January 1, 1995;
 Repealed Eff. July 1, 2004.

21 NCAC 34C .0205 LABELS

In addition to the requirements of G.S. 90-210.29A, the crematory licensee shall attach a typed or printed label to the temporary container, urn or other permanent container at the time the cremated remains are placed therein. If an inside and outside container are used, then both shall be labelled. The label shall contain the name of the decedent, the date of cremation and the name of the crematory.

History Note: Authority G.S. 90-210.126; 90-210.134(a);
 Eff. July 1, 1991;
 Amended Eff. July 1, 2004.

21 NCAC 34C .0206 CLEANLINESS

All areas of the crematory and holding facility devoted to the reception, storage and cremation of human remains and to the pulverization and delivery of cremated remains, and all equipment located therein, shall be kept in good repair and in a sanitary condition and subject to inspection by the Board or its agents at all times.

History Note: Authority G.S. 90-210.41(9),(12); 90-210.50(a);
Eff. July 1, 1991.

SECTION .0300 - AUTHORIZATIONS, REPORTS, RECORDS

21 NCAC 34C .0301 AUTHORIZATION TO CREMATE

History Note: Authority G.S. 90-210.124; 90-210.126(a); 90-210.134(a);
Eff. July 1, 1991;
Amended Eff. January 1, 1995;
Repealed Eff. July 1, 2004.

21 NCAC 34C .0302 WAIVER FORM

All waivers of the waiting period of cremation required by G.S. 90-210.129(e) shall be recorded on forms provided by the Board. The form shall require the official authorized to waive the waiting period for cremation to furnish the statutory basis for the waiver, the signature of the official authorized to waive the waiting period, and any other information the Board deems necessary as required by law.

History Note: Authority G.S. 90-210.123; 90-210.127; 90-210.134(a);
Eff. July 1, 1991;
Amended Eff. August 1, 2004.

21 NCAC 34C .0303 RECORDS OF CREMATION AND DELIVERY

(a) All crematory licensees shall complete receipts for human remains on Board forms. The crematory licensee shall furnish the name of the crematory licensee, full name of the decedent, date and time of death, date and time the human remains was delivered to the crematory licensee, any affiliation by the person delivering remains with a funeral establishment or crematory, the name and signature of the employee or agent of the crematory who received the human remains, and any other information the Board deems necessary as required by law. Every crematory licensee shall furnish this receipt to the person who delivers the human remains to the crematory licensee.

(b) All records documenting the release of human remains from a crematory licensee to the person who receives the cremated remains shall be completed on Board forms. The crematory licensee shall furnish the name of the crematory licensee, the full name of the decedent, the date and time of release, the name of the person who received the cremated remains, the place where cremated remains were received, any affiliation by the person receiving remains with a funeral establishment or other entity, the signatures of the person delivering the remains and the recipient of remains, any mailing or handling instructions, and any other information the Board deems necessary as required by law. Crematory licensees must provide evidence by signature, postal receipt or its equivalent, of the receipt of the cremated remains.

(c) All records documenting the release of human remains from a funeral establishment to the person who receives the cremated remains shall be completed on Board forms. The funeral establishment shall furnish the name of the funeral establishment, the full name of the decedent, the date and time of release, the person to whom the remains were released, the type of container in which the remains were released, the signatures of the parties delivering and receiving remains, any shipping or special handling instructions, and any other information the Board deems necessary as required by law. Funeral establishments must provide evidence by signature, postal receipt or its equivalent, of the receipt of the cremated remains.

(d) In order to track the human remains through the cremation process from the time the remains are received at the crematory until the cremated remains are delivered, all crematory licensees shall keep records on Board forms. The crematory licensee shall furnish the name of the crematory licensee, full name of the decedent, description of the

cremation container used, time and date the decedent was placed into the crematory, person who placed the deceased in the crematory, time and date the cremated remains were removed from the crematory, type of container in which the cremated remains were placed, time and date the cremated remains were processed, the name and signature of the person who processed the cremated remains and placed them into a container, and any other information the Board deems necessary as required by law.

(e) In lieu of the separate forms required by Paragraphs (a), (b), and (d) of this Rule, a crematory licensee may use a form prescribed by the Board that combines all information required by Paragraphs (a), (b), and (d) of this Rule.

(f) The crematory licensee shall retain the completed forms required by this Rule and shall produce all crematory forms for inspection or copying by the Board or its agents upon request. The funeral establishment shall retain the completed form required by Paragraph (c) of this Rule and shall produce the form for inspection or copying to the Board or its agents upon request.

History Note: Authority G.S. 90-210.127; 90-210.134(a);
Eff. July 1, 1991;
Amended Eff. September 1, 2009; August 1, 2004.

21 NCAC 34C .0304 CREMATION AND DELIVERY FORM

History Note: Authority G.S. 90-210.134(a);
Eff. July 1, 1991;
Repealed Eff. July 1, 2004.

21 NCAC 34C .0305 MONTHLY REPORTS

No later than the tenth day of each month, every crematory licensee shall remit to the Board the per-cremation fees under 21 NCAC 34A .0201(b) for the cremations which the licensee performed during the immediately preceding calendar month. The fees shall be accompanied by a statement signed by an authorized representative of the crematory indicating the name of the crematory, each decedent's name, date of each cremation, the person or other entity for whom each cremation was performed, the number of cremations contained in the report and the total amount of fees remitted with the report.

History Note: Authority G.S. 90-210.132; 90-210.134(a);
Eff. July 1, 1991;
Amended Eff. February 1, 2009; July 1, 2004.

21 NCAC 34C .0306 RETENTION OF RECORDS

A copy of all death certificates, authorizations, waivers, statements, reports and other documents required by G.S. 90-210.120 through G.S. 90-210.134 and by the rules in this Subchapter shall be retained by the crematory licensee for a period of three years and shall, during that period, be subject to inspection by the Board or its agents.

History Note: Authority G.S. 90-210.127; 90-210.134(a);
Eff. July 1, 1991;
Amended Eff. January 1, 2009; July 1, 2004.

SUBCHAPTER 34D - PRENEED FUNERAL CONTRACTS

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 34D .0101 APPROVAL OF CONTRACT FORMS

All preneed funeral contracts shall be transacted on forms prescribed by the Board. The Board may prescribe different forms for standard or inflation-proof contracts or for trust or insurance contracts. Each preneed funeral contract form shall contain the following information:

- (1) Is written in clear, understandable language and is printed in easy-to-read type, size and style on paper not larger than 8 1/2 by 14 inches, with printing on both sides permitted.
- (2) States or provides space for inserting the name, address and preneed funeral establishment license number of the contracting funeral establishment.
- (3) Provides space for inserting the names, addresses and Social Security numbers of the purchaser and contract beneficiary.
- (4) States that a description of the merchandise and services purchased is attached to the seller's and purchaser's copies of the contract and is a part of the agreement. The attachment shall be a form provided by the Board satisfying the requirements of a "statement of goods and services selected" as described in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.
- (5) Discloses any penalties or restrictions, including geographical restrictions, on the delivery of merchandise and services.
- (6) States whether it is a standard or inflation-proof contract and summarizes, consistent with North Carolina law, the incidents of such type of contract.
- (7) Provides space for inserting the financial transaction.
- (8) Provides space for the purchaser to indicate, by the purchaser's signature or initials, the following:
 - (a) The purchaser's choice of trust-funded or insurance-funded contract.
 - (b) That the purchaser acknowledges that the funeral establishment will retain, and not deposit in trust, a stated percentage (not more than 10%) of the purchaser's payments.
 - (c) The purchaser's choice of revocable or irrevocable contract.
 - (d) That the purchaser acknowledges that the sale was made at the funeral establishment's place of business, so as to negate the cancellation rights connected with an off-premises sale.
- (9) Contains notice, in bold type, of the purchaser's right to cancel an off-premises sale.
- (10) Contains notice, in bold type, that if the purchaser does not receive notification from the Board, within 30 days, that it has received a copy of the contract, the purchaser should notify the Board at its current, stated address and telephone number.
- (11) Explains the parties' rights and obligations, consistent with North Carolina law, with respect to contract revocation, default, the funeral establishment's retention of a portion of the purchase price free of the trust, and the substitution of funeral homes to perform the contract.
- (12) Contains a notice of the existence of the Board's preneed recovery fund.
- (13) Contains, or refers to an attachment containing, all funeral sales disclosures to consumers as required by federal and North Carolina law.
- (14) Provides spaces for the signatures of the parties to the contract, including the signature and preneed sales license number of the preneed sales licensee who sold the contract. The following shall appear, in bold type, beneath the signature of the preneed sales licensee: "Signed and preneed sales license number affixed in presence of Purchaser at time of sale."
- (15) Any other information the Board deems necessary and is required by law.

History Note: Authority G.S. 90-210.62(b); 90-210.69(a),(c)(6);
Eff. July 1, 1993;
Amended Eff. January 1, 2009; August 1, 1998.

21 NCAC 34D .0102 REFUND OF CONTRACT FEES

The preneed funeral contract fee, paid as required by G.S. 90-210.67(d), shall be refunded by the Board to the payor only in the event that, because the insurance company refuses to insure the proposed preneed funeral contract beneficiary, the preneed funeral contract does not become binding.

History Note: Authority G.S. 90-210.69(a);

Eff. May 1, 1993.

21 NCAC 34D .0103 INSURANCE-FUNDED CONTRACTS

A "preneed funeral contract," as defined in G.S. 90-210.60(5), is created when any person, partnership, corporation or association of individuals engaged in the business of providing funeral services or merchandise is named, with knowledge of being named, as a revocable or irrevocable beneficiary or co-beneficiary or assignee of a "prearrangement insurance policy," as defined in G.S. 90-210.60(4), regardless of whether specific funeral services or merchandise is selected. This example does not preclude the creation of insurance-funded preneed funeral contracts pursuant to other facts.

*History Note: Authority G.S. 90-210.69(a);
Eff. May 1, 1993.*

21 NCAC 34D .0104 INDICATION OF APPROVAL OF FORMS

*History Note: Authority G.S. 90-210.69(a); 90-210.62(b);
Eff. August 2, 1993;
Repealed Eff. November 1, 2004.*

21 NCAC 34D .0105 CONTRACT COPIES TO BE FILED

Within 10 days following the sale of a preneed funeral contract, any person selling the contract shall send a copy of it to the Board, accompanying the fee required by G.S. 90-210.67(d).

*History Note: Authority G.S. 90-210.69(a); 90-210.62(b); 90-210.67(d); 90-210.68(a);
Eff. August 2, 1993.*

21 NCAC 34D .0106 TRANSFER OF TRUST PRENEED CONTRACTS TO ANOTHER JURISDICTION

(a) In order to revoke a preneed funeral contract under G.S. 90-210.65(e)(1), the preneed contract purchaser, or after the death of the preneed contract purchaser, the preneed contract beneficiary or his or her legal representative, shall submit a written request to the Board. The request shall contain a written request to transfer the contract; the domicile of the preneed contract beneficiary at the time of the request; the mailing address of the requesting party, if different from the domicile of the preneed contract beneficiary; and a copy of the new preneed contract executed under the laws of the state of the preneed contract beneficiary's domicile.

(b) Upon finding that the contract may be revoked under G.S. 90-210.65(e)(1), the Board shall order the contract revoked and the funds be transferred to the succeeding funeral establishment under G.S. 90-210.63. A copy of the Board's order shall be served on the preneed contract beneficiary, the contracting funeral establishment, and the financial institution or insurance company holding the preneed funeral funds.

*History Note: Authority G.S. 90-210.65(e)(1); 90-210.69(a);
Eff. January 1, 2009.*

SECTION .0200 – LICENSING

21 NCAC 34D .0201 PRENEED FUNERAL ESTABLISHMENT LICENSE

(a) A funeral establishment wishing to apply for a preneed funeral establishment license shall complete a form provided by the Board. The applicant shall submit, in addition to the information required by G.S. 90-210.67, the following information:

- (1) its funeral establishment permit number issued pursuant to G.S. 90-210.25(d);
 - (2) type of business entity;
 - (3) whether it is authorized to transact business in North Carolina;
 - (4) whether it is solvent;
 - (5) whether there exist unsatisfied civil judgments against the applicant and copies of any;
 - (6) whether the applicant or any of its principals has been denied a license to engage in an occupation or had a license suspended, revoked or placed on probation;
 - (7) whether any principal has been convicted of a crime involving fraud or moral turpitude;
 - (8) for all applicants required to maintain a surety bond, evidence that the bond is in effect at the time of application; and
 - (9) any other information deemed necessary by the Board and required by law.
- (b) The Board may require an applicant to submit additional proof to satisfy the requirements of G.S. 90-210.67.
- (c) The applicant shall submit, with its application, the names, preneed sales license numbers and telephone numbers of all preneed sales licensees who will sell preneed funeral contracts as employees or agents of the applicant. Any additions to or deletions from the list of names shall be reported to the Board, within 10 days of the change, as an amended application on an application form.
- (d) The same Board form shall be used for the original application, annual renewal application and amended application. All applications shall be verified as correct before a notary public by the owner, a corporate officer, partner, or member of the limited liability company owning the preneed establishment.
- (e) Preneed funeral establishment licenses shall not be transferable. Upon a transfer of ownership of a funeral establishment, the provisions of 21 NCAC 34B .0605 apply, and a new application for a preneed funeral establishment license shall be made to the Board within 30 days of the transfer. The application fee shall accompany the application, as in the case of initial applications.
- (f) The license certificate shall be conspicuously displayed in the funeral establishment at the address to which it is issued.

History Note: Authority G.S. 90-210.67(a),(b); 90-210.69(a);
 Eff. May 1, 1993;
 Amended Eff. February 1, 2009.

21 NCAC 34D .0202 PRENEED SALES LICENSE

- (a) Subject to G.S. 90-210.69(c), holding a funeral director's license, issued by the Board, or a funeral service license, issued by the Board, is the qualification to be eligible for a preneed sales license.
- (b) The preneed sales licensee may engage, under the preneed sales license, in the following preneed funeral planning activities, pursuant to the definition of "preneed funeral planning" in G.S. 90-210.60(8):
- (1) show and explain written materials, including price lists and photographs, descriptive of the funeral services and merchandise and the preneed funeral plan or contract being offered;
 - (2) explain the various types of funeral ceremonies and services and the qualities and characteristics of various kinds of funeral merchandise;
 - (3) sell, on a preneed basis, funeral services and merchandise;
 - (4) record, on any form or otherwise, specific items of funeral services and merchandise selected on a preneed basis;
 - (5) make funeral arrangements on a preneed basis; and
 - (6) sign preneed contracts. No preneed funeral planning activities shall be engaged in by anyone other than a preneed sales licensee or a registered resident trainee in funeral service or funeral directing pursuant to 21 NCAC 34B .0103(b); provided, however, no preneed sales license is required solely for the sale of an insurance policy, and in connection with such a sale, the salesperson shall not be deemed to have engaged in preneed funeral planning if, for the sole purpose of permitting a prospective purchaser to make an informed decision as to the amount of insurance desired, the salesperson shows only price lists of funeral services and merchandise.
- (c) A licensed funeral director or funeral service licensee wishing to apply for a preneed sales license shall submit to the Board the applicant's name, address, telephone number, funeral director's or funeral service license number, name and address of the preneed funeral establishment licensee or licensees on whose behalf the applicant will sell preneed funeral contracts, and the applicant's employment or agency relationship with the licensee or licensees. If the applicant proposes to sell on behalf of more than one preneed funeral establishment licensee, the applicant shall disclose information to

satisfy the requirement of G.S. 90-210.67(a) that the preneed funeral establishment licensees be related by ownership or contract.

(d) The Board shall issue to each preneed sales licensee a pocket card as certification of the preneed sales license. The preneed sales licensee shall carry the card while engaging in preneed funeral planning. Upon making application for a license the applicant shall indicate the names of the preneed funeral establishment licensees on whose behalf the preneed sales licensee is authorized to sell preneed funeral contracts. The applicant shall pay an application fee and an annual renewal fee determined, respectively, by multiplying the application fee and renewal fee in 21 NCAC 34A .0201(c) times the number of preneed funeral establishment licensees on whose behalf the preneed sales licensee is authorized to sell. When there is any change in the list of establishments on whose behalf the preneed sales licensee is authorized to sell, the preneed sales licensee shall, within 10 days, file an amended list with the Board and shall pay the application fee for each new funeral establishment licensee named on the list, regardless of whether one or more names have been deleted. The total preneed sales license application fee and total renewal fee paid pursuant to this Paragraph shall not exceed the maximums, respectively, set by statute.

(e) The preneed sales licensee shall sign and affix his or her preneed sales license number to each preneed funeral contract, which he or she sells, in the presence of the purchaser of the contract at the time of sale.

History Note: Authority G.S. 90-210.25(a)(4); 90-210.67(a),(c); 90-210.69(a);
Eff. July 1, 1993;
Amended Eff. January 1, 1996; June 1, 1994.

21 NCAC 34D .0203 SURETY BONDS

(a) Any applicant for a new preneed funeral establishment license or any preneed licensee required to maintain a surety bond under G.S. 90-210.67(b) shall submit a copy of the bond with its initial application and with each renewal application. The bond shall cover all insurance premiums paid under a preneed insurance policy and all trust payments under a preneed funeral trust. The bond shall name the Board as trustee and shall be issued by a bonding company licensed to do business in this State. The Board shall recognize all surety bond forms approved by the N.C. Department of Insurance.

(b) Any preneed establishment licensee required to obtain a bond may petition the Board to repeal the requirement one year after obtaining the bond. The preneed establishment licensee shall establish that the firm is solvent. For purposes of this paragraph, solvency shall be defined as assets in excess of liabilities; provided, however, that goodwill shall not be considered an asset and that unperformed preneed funeral contracts shall be treated as both an asset and a liability of equal value. A preneed establishment may demonstrate solvency by submitting a balance sheet prepared by a certified public accountant that is no more than 90 days old or through other financial evidence generally recognized as valid by certified public accountants.

(c) All petitions must be filed on a form provided by the Board. The petition form shall be verified before a notary public by the owner, a corporate officer, partner, or member of the limited liability company owning the preneed establishment and shall require the petitioner to furnish the following information:

- (1) the name of the preneed establishment;
- (2) certifications that the firm is solvent, has no unsatisfied civil judgments against it, and has not paid a claim on the bond; and
- (3) any other information that the Board deems necessary to determine solvency or to process the petition and that is required by law.

History Note: Authority G.S. 90-210.67(b); 90-210.69(a);
Eff. October 1, 2010.

SECTION .0300 - OPERATIONS

21 NCAC 34D .0301 RECORD AND BOOKKEEPING REQUIREMENTS

(a) Each preneed funeral establishment licensee shall maintain a file containing:

- (1) a copy of each of its license applications, including applications for license renewals;
- (2) copies of all preneed examination reports; and

- (3) copies of all annual reports to the Board.
- (b) Each such licensee shall maintain files containing all preneed funeral contracts purchased. The files shall be maintained separately for outstanding contracts and for matured or cancelled contracts. The outstanding contract file shall include a copy of each preneed contract filed alphabetically or numerically. The matured or cancelled contract file shall contain a copy of each preneed contract, together with a copy of the certificate of performance, the preneed statement of funeral goods and services and the at-need statement of funeral goods and services, and shall be filed either chronologically or alphabetically by year.
- (c) Each such licensee shall maintain the following records:
- (1) a contract register listing the purchaser's name and final disposition of the contract;
 - (2) a separate cash journal or separate cash receipt book designated for preneed, showing all preneed payments collected;
 - (3) an individual ledger for each contract purchaser showing the purchaser's and beneficiary's names, amount of the contract, amount paid on the contract, amount retained free of trust pursuant to G.S. 90-210.61(a)(2), deposits to trust, withdrawals from trust as permitted by law and the reasons therefor, interest on deposits, total amount of the trust, and amounts paid to insurance companies for insurance-funded contracts;
 - (4) copies of bank statements and deposit slips from financial institutions in which trust funds are deposited, certificate of deposit records, including both principal and interest transactions and trust accountings; and
 - (5) copies of applications for insurance, insurance policies, beneficiary designation documents and instruments of assignment.
- (d) When two or more preneed funeral establishment licensees are wholly owned by the same entity, all of the copies and records required to be maintained by Paragraphs (a) and (b) of this Rule may be maintained at one address of the licensee, or they may be divided among and maintained at various addresses of the licensees, in their discretion.
- (e) The copies required to be maintained by Paragraph (a) of this Rule shall be retained a minimum of ten years following their origination. The copies and records required to be maintained by Paragraphs (b) and (c) of this Rule shall be retained a minimum of ten years following the substitution of a different funeral establishment to perform the preneed funeral contract, the revocation of the preneed funeral contract or the death of the contract beneficiary, whichever occurs first.
- (f) Individual ledgers and records of the depository financial institutions shall be balanced at least annually to ensure accuracy.

*History Note: Authority G.S. 90-210.68(a); 90-210.69(a);
Eff. May 1, 1993;
Amended Eff. November 1, 2004; January 1, 1996; August 2, 1993.*

21 NCAC 34D .0302 ANNUAL REPORT

Each preneed funeral establishment licensee shall file an annual report with the Board. The report shall include the following:

- (1) the total number of standard and inflation-proof trust-funded and insurance-funded preneed funeral contracts maintained by the licensee;
- (2) the number of contracts sold in the reporting period;
- (3) the number of contracts which expired, including contracts performed, revoked and transferred, in the reporting period;
- (4) the total year-end balance of all preneed trust accounts maintained at each financial institution;
- (5) the total year-end balance of all insurance-funded preneed contracts written with each insurance company;
- (6) for each preneed contract sold, whether the preneed contract is active, performed, cancelled, or lapsed; and
- (7) for each active preneed contract, the current insurance policy value or trust account balance.

The annual report shall be verified as correct before a notary public by the location manager registered under G.S. 90-210.25(d)(2)a. or by a corporate officer of the preneed establishment licensee. The annual report shall be filed not later than March 31 each year by each firm holding a preneed establishment license at any time during the preceding year ending December 31.

History Note: Authority G.S. 90-210.69(a); 90-210.68(a);
Eff. May 1, 1993;
Amended Eff. September 1, 2009.

21 NCAC 34D .0303 CERTIFICATE OF PERFORMANCE

(a) The certificate of performance as required by G.S. 90-210.64(a) shall be a form provided by the Board and shall require the following information: the names, addresses and preneed funeral establishment license numbers of the performing funeral establishment and the contracting funeral establishment; the name of the deceased beneficiary of the preneed funeral contract; the date of death and the county where the death certificate was or will be filed; the invoice amount; certification that the contract was or was not performed in whole or in part; the name and address of the financial institution where the preneed trust funds are deposited and the trust account or certificate number; the name and address of the insurance company that issued the prearrangement insurance policy and the policy number; and the amount and the date of the payment by the financial institution or insurance company and to whom paid.

(b) The form shall be completed by each funeral establishment performing any services or providing any merchandise pursuant to the preneed funeral contract, or, if none are performed or provided, by the contracting funeral establishment. The form shall be presented to the financial institution or insurance company for payment. Within 10 days following its receipt of payment, any funeral establishment that is required to complete the form shall file a copy with the Board.

History Note: Authority G.S. 90-210.64(a); 90-210.68; 90-210.69(a);
Eff. May 1, 1993;
Amended Eff. February 1, 2009; November 1, 2004; August 1, 1998; November 1, 1994.

21 NCAC 34D .0304 TRANSFER OF TRUST FUNDS

When, pursuant to G.S. 90-210.68(b), a preneed licensee directs a transfer of preneed funds to a substitute financial institution, the financial institution which is a party to the preneed funeral contract shall make the transfer directly and solely to the substitute financial institution and not mediately to the preneed licensee. The notification to the Board as required by G.S. 90-210.68(b) shall be made on a form provided by the Board, which shall indicate the transfer of the funds by the financial institution and their acceptance by the substitute financial institution and the agreement of the substitute financial institution to be bound by the preneed funeral contract and, if the contract is revocable, certification that the licensee has notified the purchaser of the intended transfer.

History Note: Authority G.S. 90-210.69(a); 90-210.68(b);
Eff. May 1, 1993.

SECTION .0400 - PRENEED RECOVERY FUND

21 NCAC 34D .0401 DEFINITIONS

For the purposes of this section, the following definitions shall apply:

- (1) "Fund" shall mean the preneed recovery fund as established by G.S. 90-210.66.
- (2) "Applicant" shall mean a person who has suffered a reimbursable loss pursuant to G.S. 90-210.66.
- (3) "Reimbursable losses" are only those losses of money which meet the requirements of G.S. 90-210.66 and in which, as determined by the Board, the applicant has exhausted all viable means to collect the applicant's losses and has complied with this section. Reimbursable losses shall not include losses of spouses, children, parents, grandparents, siblings, partners, associates, employers and employees of the person or business entity causing the losses.

History Note: Authority G.S. 90-210.69(a); 90-210.66(c), (d), (f), (g);
Eff. May 1, 1993.

21 NCAC 34D .0402 APPLICATION FOR REIMBURSEMENT

(a) The Board shall furnish a form of application for reimbursement which shall require the following information:

- (1) The name and address of the applicant.
- (2) The name and address of the licensee under G.S. 90, Article 13D, who caused the alleged loss.
- (3) The amount of the alleged loss for which application for reimbursement is made.
- (4) A copy of any preneed funeral contract which was the basis of the alleged loss.
- (5) The date or period of time during which the loss was incurred.
- (6) A statement of facts relative to the application.
- (7) All supporting documents, including copies of court proceedings and other papers indicating the efforts of the applicant to obtain reimbursement from the licensee, insurance companies or others.
- (8) A documentation of any receipt of funds in partial payment of the loss.
- (9) Any other information the Board deems necessary as required by law.

(b) The application form shall contain the following statement in boldface type: "The North Carolina General Assembly in G.S. 90-210.66 established the preneed recovery fund and directed the North Carolina Board of Funeral Service to provide for its funding and administration. The establishment of the fund did not create or acknowledge any legal responsibility on the part of the Board for the acts, or failure to act, of persons, firms or corporations licensed by it. All reimbursements of losses from the fund shall be a matter of privilege in the sole discretion of the Board and not a matter of right. No applicant or member of the public shall have any right in the fund as a third-party beneficiary or otherwise."

(c) An application shall be filed in the office of the Board.

History Note: Authority G.S. 90-210.66(a), (c), (d), (f), (g); 90-210.69(a);
Eff. May 1, 1993.
Amended Eff. November 1, 2004.

21 NCAC 34D .0403 PROCESSING APPLICATIONS

(a) The Board in making investigation of all applications filed for reimbursement from the preneed recovery fund may require the attendance of and examine under oath all persons, including the alleged defalcating licensee, whose testimony it may require. A determination of the application shall be made by a majority vote of those present at a Board meeting at which a quorum is present. The Board may afford the applicant a reconsideration of the application; otherwise, a rejection is final, and no further consideration shall be given by the Board to the application or to another application based upon the same alleged facts.

(b) The Board shall determine the amount of loss, if any, for which the applicant shall be reimbursed from the fund. In making such determination, the Board's considerations shall include:

- (1) The negligence, if any, of the applicant which contributed to the loss.
- (2) The hardship which the applicant suffered because of the loss.
- (3) The total amount of reimbursable losses of applicants on account of any one licensee or association of licensees.
- (4) The total amount of previous reimbursable losses for which total reimbursement has not been made and the total assets of the fund.
- (5) The total amount of insurance available to compensate the applicant for the loss.

(c) The Board may allow further reimbursements in cases in which a loss has not been fully reimbursed.

(d) Before receiving a payment from the fund, the person who is to receive such payment or his or her legal representative shall execute and deliver to the Board a written agreement stating that in the event the reimbursed applicant or his or her estate ever receives any restitution from the licensee or from any other source, the reimbursed applicant or his or her estate shall repay the fund the restitution received or the amount of reimbursement from the fund, whichever is less.

History Note: Authority G.S. 90-210.66(a), (c), (d), (g); 90-210.69(a);
Eff. May 1, 1993;
Amended Eff. November 1, 2004.

21 NCAC 34D .0404 SUBROGATION

In pursuing a subrogation claim as authorized by G.S. 90-210.66(h), the Board may require the reimbursed applicant to execute a subrogation agreement, providing for, among other things, that the action may be brought in

the name of the applicant. Upon commencement of an action by the Board pursuant to its subrogation rights, it shall notify the reimbursed applicant at his or her last known address in order that the applicant may join in the action if desired. Any amounts recovered by the Board in excess of the amount to which the fund is subrogated, less the Board's actual costs of recovery, shall be paid to or retained by the reimbursed applicant as the case may be.

History Note: Authority G.S. 90-210.69(a); 90-210.66(d);
Eff. May 1, 1993.