



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB4202

by Rep. Dan Brady

SYNOPSIS AS INTRODUCED:

225 ILCS 41/15-57 new
225 ILCS 41/15-75

Amends the Funeral Directors and Embalmers Licensing Code. Provides that a licensee, or anyone else lawfully permitted to do so under the Code, shall either embalm or refrigerate a deceased human body if the funeral establishment has been in possession of the body for more than 48 hours and has not received any instruction from the person making the funeral arrangements regarding how the body is to be disposed of. Further provides that, at the time funeral arrangements are made, a licensee shall disclose on the written statement of services provided to the person making the funeral arrangements that it is required to embalm or refrigerate the body after 48 hours.

LRB098 14813 ZMM 49764 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Funeral Directors and Embalmers Licensing
5 Code is amended by adding Section 15-57 and changing Section
6 15-75 as follows:

7 (225 ILCS 41/15-57 new)

8 Sec. 15-57. Embalming or refrigeration after 48 hours.

9 (a) The licensee, or anyone else lawfully permitted to do
10 so under this Code, shall either embalm or refrigerate a
11 deceased human body that is removed from the place of death by
12 an authorized licensee and transported to the funeral
13 establishment where it is to be prepared for final disposition
14 after 48 hours have passed since the body's arrival at the
15 funeral establishment. A funeral establishment shall only
16 embalm or refrigerate a body under this Section if it does not
17 receive instruction from the person making the funeral
18 arrangements regarding how the body is to be disposed of within
19 this 48-hour time period.

20 (b) In addition to the disclosures required under
21 subparagraph (C) of paragraph (36) of subsection (b) of Section
22 15-75 of this Code, a licensee shall clearly disclose on the
23 written statement of services furnished to the person making

1 the funeral arrangements that it is required to embalm or
2 refrigerate a deceased human body after 48 hours under this
3 Section. The disclosure shall be made in writing and must
4 appear directly next to the prices charged by the funeral
5 establishment for embalming and refrigeration. The funeral
6 establishment may not charge the person making the arrangements
7 for the costs associated with embalming or refrigeration
8 performed pursuant to this Section if this disclosure is not
9 made.

10 (225 ILCS 41/15-75)

11 (Section scheduled to be repealed on January 1, 2023)

12 Sec. 15-75. Violations; grounds for discipline; penalties.

13 (a) Each of the following acts is a Class A misdemeanor for
14 the first offense, and a Class 4 felony for each subsequent
15 offense. These penalties shall also apply to unlicensed owners
16 of funeral homes.

17 (1) Practicing the profession of funeral directing and
18 embalming or funeral directing, or attempting to practice
19 the profession of funeral directing and embalming or
20 funeral directing without a license as a funeral director
21 and embalmer or funeral director.

22 (2) Serving or attempting to serve as an intern under a
23 licensed funeral director and embalmer without a license as
24 a licensed funeral director and embalmer intern.

25 (3) Obtaining or attempting to obtain a license,

1 practice or business, or any other thing of value, by fraud
2 or misrepresentation.

3 (4) Permitting any person in one's employ, under one's
4 control or in or under one's service to serve as a funeral
5 director and embalmer, funeral director, or funeral
6 director and embalmer intern when the person does not have
7 the appropriate license.

8 (5) Failing to display a license as required by this
9 Code.

10 (6) Giving false information or making a false oath or
11 affidavit required by this Code.

12 (b) The Department may refuse to issue or renew, revoke,
13 suspend, place on probation or administrative supervision,
14 reprimand, or take other disciplinary or non-disciplinary
15 action as the Department may deem appropriate, including
16 imposing fines not to exceed \$10,000 for each violation, with
17 regard to any license under the Code for any one or combination
18 of the following:

19 (1) Fraud or any misrepresentation in applying for or
20 procuring a license under this Code or in connection with
21 applying for renewal of a license under this Code.

22 (2) Conviction by plea of guilty or nolo contendere,
23 finding of guilt, jury verdict, or entry of judgment or by
24 sentencing of any crime, including, but not limited to,
25 convictions, preceding sentences of supervision,
26 conditional discharge, or first offender probation, under

1 the laws of any jurisdiction of the United States: (i) that
2 is a felony or (ii) that is a misdemeanor, an essential
3 element of which is dishonesty, or that is directly related
4 to the practice of the profession.

5 (3) Violation of the laws of this State relating to the
6 funeral, burial or disposition of deceased human bodies or
7 of the rules and regulations of the Department, or the
8 Department of Public Health.

9 (4) Directly or indirectly paying or causing to be paid
10 any sum of money or other valuable consideration for the
11 securing of business or for obtaining authority to dispose
12 of any deceased human body.

13 (5) Professional incompetence, gross negligence,
14 malpractice, or untrustworthiness in the practice of
15 funeral directing and embalming or funeral directing.

16 (6) (Blank).

17 (7) Engaging in, promoting, selling, or issuing burial
18 contracts, burial certificates, or burial insurance
19 policies in connection with the profession as a funeral
20 director and embalmer, funeral director, or funeral
21 director and embalmer intern in violation of any laws of
22 the State of Illinois.

23 (8) Refusing, without cause, to surrender the custody
24 of a deceased human body upon the proper request of the
25 person or persons lawfully entitled to the custody of the
26 body.

1 (9) Taking undue advantage of a client or clients as to
2 amount to the perpetration of fraud.

3 (10) Engaging in funeral directing and embalming or
4 funeral directing without a license.

5 (11) Encouraging, requesting, or suggesting by a
6 licensee or some person working on his behalf and with his
7 consent for compensation that a person utilize the services
8 of a certain funeral director and embalmer, funeral
9 director, or funeral establishment unless that information
10 has been expressly requested by the person. This does not
11 prohibit general advertising or pre-need solicitation.

12 (12) Making or causing to be made any false or
13 misleading statements about the laws concerning the
14 disposition of human remains, including, but not limited
15 to, the need to embalm, the need for a casket for cremation
16 or the need for an outer burial container.

17 (13) (Blank).

18 (14) Embalming or attempting to embalm a deceased human
19 body without express prior authorization of the person
20 responsible for making the funeral arrangements for the
21 body. This does not apply to cases where embalming is
22 directed by local authorities who have jurisdiction or when
23 embalming is required by Section 15-57 of this Code or any
24 other applicable State or local law. A licensee may embalm
25 without express prior authorization if a good faith effort
26 has been made to contact family members and has been

1 unsuccessful and the licensee has no reason to believe the
2 family opposes embalming.

3 (15) Making a false statement on a Certificate of Death
4 where the person making the statement knew or should have
5 known that the statement was false.

6 (16) Soliciting human bodies after death or while death
7 is imminent.

8 (17) Performing any act or practice that is a violation
9 of this Code, the rules for the administration of this
10 Code, or any federal, State or local laws, rules, or
11 regulations governing the practice of funeral directing or
12 embalming.

13 (18) Performing any act or practice that is a violation
14 of Section 2 of the Consumer Fraud and Deceptive Business
15 Practices Act.

16 (19) Engaging in dishonorable, unethical, or
17 unprofessional conduct of a character likely to deceive,
18 defraud or harm the public.

19 (20) Taking possession of a dead human body without
20 having first obtained express permission from the person
21 holding the right to control the disposition in accordance
22 with Section 5 of the Disposition of Remains Act or a
23 public agency legally authorized to direct, control or
24 permit the removal of deceased human bodies.

25 (21) Advertising in a false or misleading manner or
26 advertising using the name of an unlicensed person in

1 connection with any service being rendered in the practice
2 of funeral directing or funeral directing and embalming.
3 The use of any name of an unlicensed or unregistered person
4 in an advertisement so as to imply that the person will
5 perform services is considered misleading advertising.
6 Nothing in this paragraph shall prevent including the name
7 of any owner, officer or corporate director of a funeral
8 home, who is not a licensee, in any advertisement used by a
9 funeral home with which the individual is affiliated, if
10 the advertisement specifies the individual's affiliation
11 with the funeral home.

12 (22) Charging for professional services not rendered,
13 including filing false statements for the collection of
14 fees for which services are not rendered.

15 (23) Failing to account for or remit any monies,
16 documents, or personal property that belongs to others that
17 comes into a licensee's possession.

18 (24) Treating any person differently to his detriment
19 because of race, color, creed, gender, religion, or
20 national origin.

21 (25) Knowingly making any false statements, oral or
22 otherwise, of a character likely to influence, persuade or
23 induce others in the course of performing professional
24 services or activities.

25 (26) Willfully making or filing false records or
26 reports in the practice of funeral directing and embalming,

1 including, but not limited to, false records filed with
2 State agencies or departments.

3 (27) Failing to acquire continuing education required
4 under this Code.

5 (28) (Blank).

6 (29) Aiding or assisting another person in violating
7 any provision of this Code or rules adopted pursuant to
8 this Code.

9 (30) Failing within 10 days, to provide information in
10 response to a written request made by the Department.

11 (31) Discipline by another state, District of
12 Columbia, territory, foreign nation, or governmental
13 agency, if at least one of the grounds for the discipline
14 is the same or substantially equivalent to those set forth
15 in this Section.

16 (32) (Blank).

17 (33) Mental illness or disability which results in the
18 inability to practice the profession with reasonable
19 judgment, skill, or safety.

20 (34) Gross, willful, or continued overcharging for
21 professional services, including filing false statements
22 for collection of fees for which services are not rendered.

23 (35) Physical illness, including, but not limited to,
24 deterioration through the aging process or loss of motor
25 skill which results in a licensee's inability to practice
26 under this Code with reasonable judgment, skill, or safety.

1 (36) Failing to comply with any of the following
2 required activities:

3 (A) When reasonably possible, a funeral director
4 licensee or funeral director and embalmer licensee or
5 anyone acting on his or her behalf shall obtain the
6 express authorization of the person or persons
7 responsible for making the funeral arrangements for a
8 deceased human body prior to removing a body from the
9 place of death or any place it may be or embalming or
10 attempting to embalm a deceased human body, unless
11 required by State or local law. This requirement is
12 waived whenever removal or embalming is directed by
13 local authorities who have jurisdiction. If the
14 responsibility for the handling of the remains
15 lawfully falls under the jurisdiction of a public
16 agency, then the regulations of the public agency shall
17 prevail.

18 (B) A licensee shall clearly mark the price of any
19 casket offered for sale or the price of any service
20 using the casket on or in the casket if the casket is
21 displayed at the funeral establishment. If the casket
22 is displayed at any other location, regardless of
23 whether the licensee is in control of that location,
24 the casket shall be clearly marked and the registrant
25 shall use books, catalogues, brochures, or other
26 printed display aids to show the price of each casket

1 or service.

2 (C) At the time funeral arrangements are made and
3 prior to rendering the funeral services, a licensee
4 shall furnish a written statement of services to be
5 retained by the person or persons making the funeral
6 arrangements, signed by both parties, that shall
7 contain: (i) the name, address and telephone number of
8 the funeral establishment and the date on which the
9 arrangements were made; (ii) the price of the service
10 selected and the services and merchandise included for
11 that price; (iii) a clear disclosure that, with the
12 exception of embalming or refrigeration performed
13 pursuant to Section 15-57 of this Code, the person or
14 persons making the arrangement may decline and receive
15 credit for any service or merchandise not desired and
16 not required by law or the funeral director or the
17 funeral director and embalmer; (iv) the supplemental
18 items of service and merchandise requested and the
19 price of each item; (v) the terms or method of payment
20 agreed upon; and (vi) a statement as to any monetary
21 advances made by the registrant on behalf of the
22 family. The licensee shall maintain a copy of the
23 written statement of services in its permanent
24 records. All written statements of services are
25 subject to inspection by the Department.

26 (D) In all instances where the place of final

1 disposition of a deceased human body or the cremated
2 remains of a deceased human body is a cemetery, the
3 licensed funeral director and embalmer, or licensed
4 funeral director, who has been engaged to provide
5 funeral or embalming services shall remain at the
6 cemetery and personally witness the placement of the
7 human remains in their designated grave or the sealing
8 of the above ground depository, crypt, or urn. The
9 licensed funeral director or licensed funeral director
10 and embalmer may designate a licensed funeral director
11 and embalmer intern or representative of the funeral
12 home to be his or her witness to the placement of the
13 remains. If the cemetery authority, cemetery manager,
14 or any other agent of the cemetery takes any action
15 that prevents compliance with this paragraph (D), then
16 the funeral director and embalmer or funeral director
17 shall provide written notice to the Department within 5
18 business days after failing to comply. If the
19 Department receives this notice, then the Department
20 shall not take any disciplinary action against the
21 funeral director and embalmer or funeral director for a
22 violation of this paragraph (D) unless the Department
23 finds that the cemetery authority, manager, or any
24 other agent of the cemetery did not prevent the funeral
25 director and embalmer or funeral director from
26 complying with this paragraph (D) as claimed in the

1 written notice.

2 (E) A funeral director or funeral director and
3 embalmer shall fully complete the portion of the
4 Certificate of Death under the responsibility of the
5 funeral director or funeral director and embalmer and
6 provide all required information. In the event that any
7 reported information subsequently changes or proves
8 incorrect, a funeral director or funeral director and
9 embalmer shall immediately upon learning the correct
10 information correct the Certificate of Death.

11 (37) A finding by the Department that the license,
12 after having his or her license placed on probationary
13 status or subjected to conditions or restrictions,
14 violated the terms of the probation or failed to comply
15 with such terms or conditions.

16 (38) (Blank).

17 (39) Being named as a perpetrator in an indicated
18 report by the Department of Children and Family Services
19 pursuant to the Abused and Neglected Child Reporting Act
20 and, upon proof by clear and convincing evidence, being
21 found to have caused a child to be an abused child or
22 neglected child as defined in the Abused and Neglected
23 Child Reporting Act.

24 (40) Habitual or excessive use or abuse of drugs
25 defined in law as controlled substances, alcohol, or any
26 other substance which results in the inability to practice

1 with reasonable judgment, skill, or safety.

2 (41) Practicing under a false or, except as provided by
3 law, an assumed name.

4 (42) Cheating on or attempting to subvert the licensing
5 examination administered under this Code.

6 (c) The Department may refuse to issue or renew or may
7 suspend without a hearing, as provided for in the Department of
8 Professional Regulation Law of the Civil Administrative Code of
9 Illinois, the license of any person who fails to file a return,
10 to pay the tax, penalty or interest shown in a filed return, or
11 to pay any final assessment of tax, penalty or interest as
12 required by any tax Act administered by the Illinois Department
13 of Revenue, until the time as the requirements of the tax Act
14 are satisfied in accordance with subsection (g) of Section
15 2105-15 of the Department of Professional Regulation Law of the
16 Civil Administrative Code of Illinois.

17 (d) No action may be taken under this Code against a person
18 licensed under this Code unless the action is commenced within
19 5 years after the occurrence of the alleged violations. A
20 continuing violation shall be deemed to have occurred on the
21 date when the circumstances last existed that give rise to the
22 alleged violation.

23 (e) Nothing in this Section shall be construed or enforced
24 to give a funeral director and embalmer, or his or her
25 designees, authority over the operation of a cemetery or over
26 cemetery employees. Nothing in this Section shall be construed

1 or enforced to impose duties or penalties on cemeteries with
2 respect to the timing of the placement of human remains in
3 their designated grave or the sealing of the above ground
4 depository, crypt, or urn due to patron safety, the allocation
5 of cemetery staffing, liability insurance, a collective
6 bargaining agreement, or other such reasons.

7 (f) All fines imposed under this Section shall be paid 60
8 days after the effective date of the order imposing the fine.

9 (g) The Department shall deny a license or renewal
10 authorized by this Code to a person who has defaulted on an
11 educational loan or scholarship provided or guaranteed by the
12 Illinois Student Assistance Commission or any governmental
13 agency of this State in accordance with item (5) of subsection
14 (g) of Section 2105-15 of the Department of Professional
15 Regulation Law of the Civil Administrative Code of Illinois.

16 (h) In cases where the Department of Healthcare and Family
17 Services has previously determined a licensee or a potential
18 licensee is more than 30 days delinquent in the payment of
19 child support and has subsequently certified the delinquency to
20 the Department, the Department may refuse to issue or renew or
21 may revoke or suspend that person's license or may take other
22 disciplinary action against that person based solely upon the
23 certification of delinquency made by the Department of
24 Healthcare and Family Services in accordance with item (5) of
25 subsection (g) of Section 1205-15 of the Department of
26 Professional Regulation Law of the Civil Administrative Code of

1 Illinois.

2 (i) A person not licensed under this Code who is an owner
3 of a funeral establishment or funeral business shall not aid,
4 abet, assist, procure, advise, employ, or contract with any
5 unlicensed person to offer funeral services or aid, abet,
6 assist, or direct any licensed person contrary to or in
7 violation of any rules or provisions of this Code. A person
8 violating this subsection shall be treated as a licensee for
9 the purposes of disciplinary action under this Section and
10 shall be subject to cease and desist orders as provided in this
11 Code, the imposition of a fine up to \$10,000 for each violation
12 and any other penalty provided by law.

13 (j) The determination by a circuit court that a licensee is
14 subject to involuntary admission or judicial admission as
15 provided in the Mental Health and Developmental Disabilities
16 Code, as amended, operates as an automatic suspension. The
17 suspension may end only upon a finding by a court that the
18 licensee is no longer subject to the involuntary admission or
19 judicial admission and issues an order so finding and
20 discharging the licensee, and upon the recommendation of the
21 Board to the Secretary that the licensee be allowed to resume
22 his or her practice.

23 (k) In enforcing this Code, the Department, upon a showing
24 of a possible violation, may compel an individual licensed to
25 practice under this Code, or who has applied for licensure
26 under this Code, to submit to a mental or physical examination,

1 or both, as required by and at the expense of the Department.
2 The Department may order the examining physician to present
3 testimony concerning the mental or physical examination of the
4 licensee or applicant. No information shall be excluded by
5 reason of any common law or statutory privilege relating to
6 communications between the licensee or applicant and the
7 examining physician. The examining physician shall be
8 specifically designated by the Department. The individual to be
9 examined may have, at his or her own expense, another physician
10 of his or her choice present during all aspects of this
11 examination. The examination shall be performed by a physician
12 licensed to practice medicine in all its branches. Failure of
13 an individual to submit to a mental or physical examination,
14 when directed, shall result in an automatic suspension without
15 hearing.

16 A person holding a license under this Code or who has
17 applied for a license under this Code who, because of a
18 physical or mental illness or disability, including, but not
19 limited to, deterioration through the aging process or loss of
20 motor skill, is unable to practice the profession with
21 reasonable judgment, skill, or safety, may be required by the
22 Department to submit to care, counseling, or treatment by
23 physicians approved or designated by the Department as a
24 condition, term, or restriction for continued, reinstated, or
25 renewed licensure to practice. Submission to care, counseling,
26 or treatment as required by the Department shall not be

1 considered discipline of a license. If the licensee refuses to
2 enter into a care, counseling, or treatment agreement or fails
3 to abide by the terms of the agreement, the Department may file
4 a complaint to revoke, suspend, or otherwise discipline the
5 license of the individual. The Secretary may order the license
6 suspended immediately, pending a hearing by the Department.
7 Fines shall not be assessed in disciplinary actions involving
8 physical or mental illness or impairment.

9 In instances in which the Secretary immediately suspends a
10 person's license under this Section, a hearing on that person's
11 license must be convened by the Department within 15 days after
12 the suspension and completed without appreciable delay. The
13 Department shall have the authority to review the subject
14 individual's record of treatment and counseling regarding the
15 impairment to the extent permitted by applicable federal
16 statutes and regulations safeguarding the confidentiality of
17 medical records.

18 An individual licensed under this Code and affected under
19 this Section shall be afforded an opportunity to demonstrate to
20 the Department that he or she can resume practice in compliance
21 with acceptable and prevailing standards under the provisions
22 of his or her license.

23 (Source: P.A. 96-863, eff. 3-1-10; 96-1463, eff. 1-1-11;
24 97-1130, eff. 8-28-12.)