

Fifty-fifth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2136

Introduced by

Industry, Business and Labor Committee

(At the request of the State Board of Funeral Service)

1 A BILL for an Act to create and enact twelve new sections to chapter 43-10 of the North Dakota
2 Century Code, relating to funeral practice exceptions, limitations on licenses, registration of
3 intern embalmers, civil penalties for the unauthorized practice of funeral service, and licenses to
4 operate a crematorium; to amend and reenact sections 43-10-01, 43-10-02, 43-10-04,
5 43-10-05, 43-10-10, 43-10-11, 43-10-12, 43-10-13, 43-10-14, 43-10-15, 43-10-16, 43-10-19,
6 43-10-20, 43-10-22, 43-10-23, 43-10-24, and 43-10-25 of the North Dakota Century Code,
7 relating to the powers of the state board of funeral service, licensure and regulation of funeral
8 service practitioners, and disciplinary action of funeral service licensees; and to repeal sections
9 43-10-17 and 43-10-18 of the North Dakota Century Code, relating to state board of funeral
10 service disciplinary hearings; and to provide a penalty.

11 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

12 **SECTION 1. AMENDMENT.** Section 43-10-01 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **43-10-01. ~~Definition of board~~ Definitions.** ~~Whenever the word "board" is~~ As used in
15 this chapter, unless the context otherwise requires, ~~it~~:

- 16 1. "Board" means the state board of funeral service.
17 2. "Crematorium" means a furnace or establishment for the cremation of corpses.
18 3. "Embalming" means preparing dead human bodies for final disposition or removal
19 by the injection of antiseptic or preservative preparations into the skin, the blood
20 vessels, or cavities of the body and feet. The external application of antiseptic
21 solution, taking charge of the remains of those dead of any communicable disease,
22 preparing dead human bodies for shipment or holding oneself out to do any of the
23 above acts by advertising or any other means.

- 1 4. "Final disposition" means the entombment, burial in a cemetery, or cremation of a
2 dead human body.
- 3 5. "Funeral establishment" means any place or premises devoted to or used in the
4 holding, care, or preparation of a dead human body for final disposition or
5 transportation or for mourning or funeral ceremony purposes.
- 6 6. "Funeral directing" means the care and disposal of the body of a deceased person;
7 the preserving, disinfecting, and preparing, by embalming or otherwise, the body of
8 a deceased person for funeral services, transportation, burial, or cremation; or
9 arranging, directing, or supervising a funeral, memorial service, or gravesite
10 service.
- 11 7. "Intern embalmer" means a person registered with the board to engage in learning
12 the practice of embalming under the instruction and personal supervision of a duly
13 licensed funeral practitioner.
- 14 8. "Funeral practitioner" means a person licensed by the board to practice funeral
15 directing and embalming.
- 16 9. "Practice of funeral service" means to engage in funeral directing or embalming.
- 17 10. "Preparation of the body" means embalming of the body or such items of care as
18 washing, disinfecting, shaving, positioning of features, restorative procedures, care
19 of hair, application of cosmetics, dressing, and casketing.
- 20 11. "Transportation of a dead human body" means any movement of a dead human
21 body by private vehicle, any other appropriate conveyance, or public transportation
22 from the place of death, to or between funeral establishments, or to any destination
23 for final disposition.

24 **SECTION 2. AMENDMENT.** Section 43-10-02 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **43-10-02. State board of funeral service - Members - Appointment - Qualifications**
27 **- Term of office - Oath - Vacancies - Removal.** The board consists of the state health officer
28 and three persons appointed by the governor. Each member appointed by the governor shall
29 serve for a term of four years and until a successor is appointed and qualified. The terms of
30 office of the appointed members expire on the thirtieth day of June and must be so arranged
31 that only one expires in any one year. The appointed members of the board must be persons

practicing embalming in this state and must have practiced for a minimum of three years in North Dakota. Each member shall qualify by taking the oath of office required of civil officers. The secretary of state may administer the oath and it must be filed in the office of the secretary of state. A vacancy on the board must be filled by appointment by the governor for the unexpired term. The governor may remove any member of the board for good cause.

SECTION 3. AMENDMENT. Section 43-10-04 of the North Dakota Century Code is amended and reenacted as follows:

43-10-04. Meetings of the board - Quorum. The board shall meet at least once a year, and may hold such special meetings as the proper and efficient discharge of its duties requires. Timely notice of all meetings must be given to every member of the board, ~~and to all applicants for licensure.~~ Three members constitute a quorum for the transaction of business.

SECTION 4. AMENDMENT. Section 43-10-05 of the North Dakota Century Code is amended and reenacted as follows:

43-10-05. Power of board to adopt rules for transaction of business - Seal - License fees. The board may:

1. Adopt rules to administer and carry out this chapter.
2. Adopt rules regulating the practice, supervision and instruction of intern embalmers.
3. Adopt rules relating to the professional conduct of funeral directors and intern embalmers.
- ~~4.~~ 4. Adopt such rules for the transaction of its business and the management of its affairs as it deems expedient and proper to administer this chapter.
- ~~5.~~ 5. Adopt and use a seal.
- ~~6.~~ 6. Adopt rules requiring each funeral home, at the time of selection of merchandise and services from that funeral home, to disclose in writing to the person or persons making the selection:
 - a. The total price at retail of the merchandise and services selected and a listing of what merchandise and services are included within such total.
 - b. The price at retail of each item of supplemental service or merchandise requested.

c. The amount of cash advances to the extent that the advances are known or can be ascertained at the time of the selection.

d. The terms of payment for merchandise and services.

~~4. 7.~~ Establish license and renewal fees for funeral service practitioners and funeral establishments within the limits imposed by this chapter.

8. Adopt rules regulating the operation of funeral establishments and crematoriums.

9. Appoint or employ persons to assist the board in carrying out its duties under this chapter.

10. Accept and investigate complaints relating to conduct governed by this chapter.

11. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating the provisions of this chapter.

SECTION 5. AMENDMENT. Section 43-10-10 of the North Dakota Century Code is amended and reenacted as follows:

43-10-10. License required. ~~No~~ A person may embalm a dead human body or not practice embalming or funeral service in this state unless that person is licensed by the board or under the direct supervision of a person licensed by the board registered with the board as an intern embalmer.

SECTION 6. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Funeral practice - Exceptions.

1. Nothing in this chapter may be construed to prevent a person from doing work within the standards and ethics of that person's profession and calling, provided that the person does not represent to the public that the person is engaging in the practice of funeral service.

2. Nothing in this chapter may be construed to prevent embalming by commissioned medical officers in the armed forces of the United States or under the United States public health service while on active duty in a respective service.

3. This chapter does not prevent the transportation of a dead human body in accordance with other applicable state and federal laws.

4. This chapter does not prohibit ambulance or other emergency transportation of a dead human body.

5. This chapter does not prohibit members of the clergy from performing funeral and gravesite or memorial services.

6. This chapter does not prohibit individuals licensed in other states as embalmers or funeral directors from assisting a North Dakota licensed embalmer during disasters or special emergencies.

7. This chapter does not prohibit individuals employed by a funeral establishment from performing nonprofessional tasks or activities that do not require independent, professional judgment under the supervision of an individual licensed to practice funeral service.

SECTION 7. AMENDMENT. Section 43-10-11 of the North Dakota Century Code is amended and reenacted as follows:

43-10-11. Examination required - Application - Qualification. Any person who desires a license to practice ~~embalming, funeral directing, or preparing dead human bodies for burial~~ funeral service shall apply to the board on a form provided by the board and submit to an examination. The applicant shall submit with the application proof that the applicant has the following qualifications:

1. Is of good moral character.
2. Has such preliminary preparation and education as the rules of the board require.
3. Has completed a twelve-month internship in accordance with rules adopted by the board.

SECTION 8. AMENDMENT. Section 43-10-12 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-10-12. Examinations - Subjects covered - Written - Record. The examination for a license to practice funeral service ~~or preparing dead human bodies for burial or shipment~~ must be in writing and must cover the following subjects:

1. Anatomy.
2. Embalming.
3. Bacteriology.
4. Chemistry.
5. Pathology.
6. Mortuary management.

7. Restorative arts.

8. Rules of the state department of health and the board governing the practice of funeral service.

9. Other subjects that may be required by the board.

All examination papers must be kept on record by the board for a period of not less than three years.

SECTION 9. AMENDMENT. Section 43-10-13 of the North Dakota Century Code is amended and reenacted as follows:

43-10-13. License - When granted - Fee - Signed by majority of board -

Nontransferable - Where displayed. The board shall grant a license to practice funeral service ~~or preparing dead human bodies for burial or shipment~~, if the applicant:

1. Has the required qualifications;

2. Has passed the required examination; and

3. Has paid to the treasurer of the board ~~a sum of not more than one hundred dollars,~~
as the application fee established by the board.

The license must be signed by a majority of the board, be attested by the board's seal, and specify by name the person to whom it is issued. A license is nonassignable and nontransferable and must be displayed by the licensee in a conspicuous place in the licensee's office or place of business.

SECTION 10. AMENDMENT. Section 43-10-14 of the North Dakota Century Code is amended and reenacted as follows:

43-10-14. License by reciprocity. A licenseholder in good standing in another state maintaining a system and standard of examination equivalent to this state may be issued a license after passing a written examination on questions concerning laws and rules of this state, upon payment of a fee established by the board, and proof of good moral character.

SECTION 11. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Limitations or qualifications placed on licensee. The board, if the facts support such action, may place reasonable limitations or qualifications on the right to practice funeral service or to operate a funeral establishment or crematory.

1 **SECTION 12. AMENDMENT.** Section 43-10-15 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **43-10-15. License - Term - Renewal - Fee for renewal.** A license to practice funeral
4 service ~~or preparing dead human bodies for burial~~ is valid for one year and may be renewed by
5 the board upon the payment to the treasurer of the annual renewal fee before December
6 thirty-first of each year. ~~The amount of the fee may not exceed one hundred dollars.~~ The
7 board may refuse to renew a license for cause.

8 **SECTION 13.** A new section to chapter 43-10 of the North Dakota Century Code is
9 created and enacted as follows:

10 **Late renewal.** A license that has been expired may be renewed at any time within
11 three years after its expiration on filing an application for renewal on a form prescribed by the
12 board and payment of the renewal fee in effect on the last regular renewal date. If the license is
13 not renewed within thirty days after its expiration, the licensee shall pay a late fee determined
14 by the board not to exceed one hundred fifty dollars. Renewal under this section is effected on
15 the date on which the application is filed, on the date which the renewal fee is paid, or on the
16 date on which the late fee, if any, is paid, whichever last occurs. A license that is not renewed
17 within three years after its expiration may not be renewed thereafter.

18 **SECTION 14.** A new section to chapter 43-10 of the North Dakota Century Code is
19 created and enacted as follows:

20 **Issuance of duplicate licenses.** Upon receipt of satisfactory evidence that a license or
21 certificate has been lost, mutilated, or destroyed, the board may issue a duplicate license or
22 certificate upon such terms and conditions as the board prescribes, and upon payment of a fee
23 of ten dollars.

24 **SECTION 15.** A new section to chapter 43-10 of the North Dakota Century Code is
25 created and enacted as follows:

26 **Change of name.** Any licensee desiring to change the name appearing on the
27 licensee's license may do so by applying to the board and paying a fee of ten dollars.

28 **SECTION 16.** A new section to chapter 43-10 of the North Dakota Century Code is
29 created and enacted as follows:

30 **Embalmer intern - Application - Qualifications.** The board shall issue a certificate of
31 registration as an embalmer intern to each applicant who files an application upon a form and in

a manner the board prescribes, accompanied by the required fee, and who furnished sufficient evidence to the board that the applicant:

1. Is at least 18 years of age;
2. Is of good moral character;
3. Has completed an accredited four-year high school course of study and two years of accredited college or university studies; and
4. Has graduated from an accredited college of mortuary science.

SECTION 17. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Certificate of registration - Term - Renewal - Fee for renewal. A certificate of registration as an embalmer intern is valid for one year and may be renewed by the board upon payment to the treasurer of the annual renewal fee before December thirty-first of each year. Registration may not be renewed more than three times. The board may refuse to renew registration for cause.

SECTION 18. AMENDMENT. Section 43-10-16 of the North Dakota Century Code is amended and reenacted as follows:

43-10-16. Grounds for ~~revocation of license~~ disciplinary action - Reimbursement of costs. The board may revoke, suspend, place on probation, or refuse to issue a license to practice funeral service or ~~preparing dead human bodies for burial, cremation, or shipment if~~ certificate of registration as an intern embalmer upon proof at a hearing that the applicant, licensee, or certificate holder:

1. Is unfit to practice funeral service.
2. Has violated this chapter or the rules of the board.

The board may impose a fee on any person or other legal entity subject to regulation under this chapter to reimburse the board for all or part of the costs of administrative actions resulting in disciplinary action, including the amount paid by the board for services from the office of administrative hearings, attorneys' fees, court costs, witness fees, staff time, and other expenses.

SECTION 19. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

1 **Expiration of suspended license - Renewal.** A suspended license is subject to
2 expiration and must be renewed as provided in this chapter, but the renewal does not entitle the
3 holder of the license, while it remains suspended and until it is reinstated, to engage in the
4 activity to which the license relates.

5 **SECTION 20. AMENDMENT.** Section 43-10-19 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **43-10-19. Hearing - Revocation Appeals.** ~~A licensed funeral service practitioner~~
8 ~~against whom charges have been made under section 43-10-16 may appear before the board~~
9 ~~at the time and place of the hearing and refute the charges made against that person. A board~~
10 ~~member may administer oaths to witnesses. If after considering the facts and circumstances,~~
11 ~~the board has sufficient reason to believe that the licensee is guilty of the charges made against~~
12 ~~the licensee, it may revoke, suspend, or refuse to issue a license. Hearings regarding~~
13 disciplinary action or denial of a license must be held under chapter 28-32. An appeal from the
14 board's final decision may be taken in accordance with the provisions of section 28-32-15.

15 **SECTION 21.** A new section to chapter 43-10 of the North Dakota Century Code is
16 created and enacted as follows:

17 **Restoration of license after revocation.** One year from the date of revocation, the
18 former licensee may make application for initial licensure. In order to receive a new license, the
19 applicant must satisfy the current requirements for licensure.

20 **SECTION 22. AMENDMENT.** Section 43-10-20 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **43-10-20. Penalty.** A person practicing or representing oneself as practicing funeral
23 service, or preparing the dead for burial or shipment in violation of this chapter, is guilty of a
24 class B misdemeanor. In addition to the criminal penalty provided, the civil remedy of injunction
25 is available to restrain and enjoin violations of any provision of this chapter without proof of
26 actual damages sustained by any person and without the board being required to file an
27 undertaking.

28 **SECTION 23.** A new section to chapter 43-10 of the North Dakota Century Code is
29 created and enacted as follows:

30 **Unauthorized practice - Civil penalty.** In addition to any other penalty, the board may
31 levy a civil penalty of not more than one thousand dollars per offense upon any unlicensed

1 person who, after a hearing or informal resolution in accordance with chapter 28-32, is found to
2 have practiced funeral service without a license issued by the board. In addition, the board may
3 assess costs and attorney's fees for the investigation and administrative proceedings against
4 the unlicensed person found to have been practicing funeral service without a currently valid
5 license. An appeal from any fine imposed pursuant to this section may be made pursuant to
6 the provisions of chapter 28-32.

7 **SECTION 24. AMENDMENT.** Section 43-10-22 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **43-10-22. Licensure of funeral establishments.** A person may not operate or
10 manage a funeral establishment without a funeral establishment license issued by the board for
11 each place of business. A funeral establishment may not be located on tax-exempt property. A
12 person desiring to operate a funeral establishment shall submit an application for an annual
13 license for each funeral establishment to the secretary or executive secretary of the board
14 accompanied by a license fee for each establishment of not more than one hundred dollars, as
15 established by the board. A person operating or managing a funeral establishment shall
16 annually, on or before December first, submit an application for renewal of a license with a
17 renewal fee of not more than one hundred dollars, as established by the board. A license is
18 valid until the following January first, unless sooner revoked. An application must show that the
19 funeral establishment has complied with all rules adopted by the board in regard to safety and
20 sanitation and will be under the supervision of ~~a North Dakota~~ an individual licensed ~~embalmer~~
21 ~~and to practice funeral director service.~~ An applicant who has met these standards must be
22 issued a license. In case of the death of an owner of a funeral establishment who leaves an
23 established business as part or all of an estate, the board may issue a special renewable
24 temporary license to the personal representative of the deceased person for the duration of the
25 administration of the estate, but which may not exceed two years. The fee for the temporary
26 license is the same as required for regular licenses.

27 **SECTION 25.** A new section to chapter 43-10 of the North Dakota Century Code is
28 created and enacted as follows:

29 **Display of license.** The funeral establishment license issued by the board to a funeral
30 establishment must be conspicuously displayed at the funeral establishment for which the
31 license was issued.

1 **SECTION 26. AMENDMENT.** Section 43-10-23 of the 1995 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **43-10-23. Inspections - Hearings - Revocations - Appeal.** The funeral establishment
4 or that part of a funeral establishment in which is conducted or intended to be conducted any
5 funeral service business, must be open at all times for inspection by the board or the state
6 department of health. The board or agents employed by it and the state department of health
7 may make such inspections as are necessary of facilities and equipment of funeral
8 establishments to ensure compliance with safety and sanitary rules adopted by the board or
9 any other rules or federal regulations pertaining to funeral service whenever either deems the
10 inspection advisable. If, upon inspection, it is found that such rules are not complied with, the
11 board shall notify the holder of the funeral establishment license and hold ~~hearings in the~~
12 ~~manner provided in sections 43-10-17, 43-10-18, and 43-10-19~~ a hearing. The board may
13 subpoena witnesses, administer oaths, and take testimony. All proceedings under this section
14 must be conducted in accordance with chapter 28-32. The board may, after a hearing, revoke,
15 suspend, or refuse to issue or renew a license upon good cause. A person aggrieved by the
16 action of the board may appeal to the district court of the county in which the person resides or
17 the district court of Burleigh County in accordance with chapter 28-32.

18 **SECTION 27. AMENDMENT.** Section 43-10-24 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **43-10-24. Penalty.** Any person willfully violating any of the provisions of sections
21 43-10-21 through 43-10-23, except rules and regulations promulgated under section 43-10-22,
22 is guilty of a class B misdemeanor. Any person who willfully violates a rule or regulation
23 promulgated under section 43-10-22 is guilty of an infraction.

24 **SECTION 28. AMENDMENT.** Section 43-10-25 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **43-10-25. Licensure of crematoriums.** ~~After July 1, 1989, a~~ A person may not
27 operate a crematorium without a license issued by the board. A person desiring to operate a
28 crematorium shall submit an application for an annual license to the board. The license fee
29 may not exceed one hundred dollars and must be the same as a funeral establishment license.

30 **SECTION 29.** A new section to chapter 43-10 of the North Dakota Century Code is
31 created and enacted as follows:

1 **Grounds for disciplinary action.** The board may revoke, suspend, place on
2 probation, or refuse to issue a license to operate a crematorium upon proof at a hearing that the
3 applicant or licensee:

- 4 1. Is unfit to operate a crematorium.
5 2. Has violated this chapter or rules adopted by the board.

6 **SECTION 30. REPEAL.** Sections 43-10-17 and 43-10-18 of the North Dakota Century
7 Code are repealed.