MISSISSIPPI LEGISLATURE REGULAR SESSION 2008

By: Representative Holland

To: Public Health and Human Services

HOUSE BILL NO. 921

AN ACT TO AMEND SECTION 73-11-41, MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN TERMS IN THE STATE BOARD OF FUNERAL SERVICE LAW; TO AMEND SECTION 73-11-47, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT MEMBERS OF THE BOARD FAILING TO ATTEND TWO CONSECUTIVE MEETINGS WITHOUT CAUSE SHALL BE SUBJECT TO REMOVAL FROM THE BOARD BY THE GOVERNOR; TO AMEND SECTION 73-11-49, MISSISSIPPI CODE OF 1972, TO DELETE THE NOTICE REQUIREMENTS IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURES ACT AS THE NOTICE RELATES TO THE BOARD'S DECISION TO ADOPT, AMEND OR REPEAL ANY RULE OR REGULATION; TO REMOVE THE PROHIBITION ON THE AUTHORITY OF THE BOARD TO ADOPT RULES AND REGULATIONS PERTAINING TO THE TRANSPORTATION AND EMBALMING OF DEAD BODIES; TO AMEND SECTION 73-11-51, MISSISSIPPI CODE OF 1972, TO CLARIFY THE EVIDENTIARY REQUIREMENTS OF QUALIFICATIONS FOR LICENSURE BY THE BOARD; TO PROVIDE THAT FAILURE OF A LICENSEE TO RECEIVE NOTICE OF RENEWAL SHALL NOT EXEMPT SUCH PERSON FROM THE RENEWAL REQUIREMENT ON OR BEFORE THE LICENSE EXPIRATION; TO REMOVE THE EXEMPTION PROVIDED TO NONRESIDENT FUNERAL SERVICE PROVIDERS CONDUCTING SERVICES WITHIN THE STATE AND RESIDENT FUNERAL SERVICE PROVIDERS CONDUCTING SERVICE OUTSIDE OF THE STATE; TO REMOVE THE AUTHORITY OF THE BOARD TO ENTER INTO INTER-STATE AGREEMENTS PERTAINING TO PERSONS LICENSED BY THE STATE OF MISSISSIPPI TO PRACTICE FUNERAL SERVICES IN STATES WHICH ENTER INTO SUCH AGREEMENTS; TO AMEND SECTION 73-11-53, MISSISSIPPI CODE OF 1972, TO REQUIRE VERIFICATION OF RESIDENT TRAINEES FOR THE PRACTICE OF FUNERAL SERVICE OR FUNERAL DIRECTING BY THE LICENSED FUNERAL SERVICE DIRECTOR UNDER WHOM THE TRAINEE IS SERVING AND APPLICABLE APPLICATION, RENEWAL AND OTHER FEES AS ESTABLISHED BY THE BOARD; TO AMEND SECTION 73-11-55, MISSISSIPPI CODE OF 1972, TO REQUIRE LICENSEES TO MEET THE REQUIREMENTS ESTABLISHED BY THE RULES AND REGULATIONS OF THE BOARD; TO PROHIBIT THE USE OF MOBILE HOMES, MODULAR UNITS, MANUFACTURED HOMES OR OTHER SIMILAR MOBILE UNIT IN THE PERFORMANCE OF ANY FUNCTION OR SERVICE OF A FUNERAL ESTABLISHMENT, EXCEPT IN CASES OF EMERGENCY AS PRESCRIBED BY THE BOARD; TO EXEMPT SUCH MOBILE HOMES, MODULAR UNITS, MANUFACTURED HOMES OR OTHER SIMILAR MOBILE UNIT OPERATING IN THE FUNCTION OR SERVICE OF A FUNERAL ESTABLISHMENT BEFORE JULY 1, 2008; TO REQUIRE SUCH MOBILE HOMES, MODULAR UNITS, MANUFACTURED HOMES OR OTHER SIMILAR MOBILE UNIT OPERATING AS A FUNERAL SERVICE ESTABLISHMENT, IF IT IS SOLD, LEASED OR RELOCATED, CEASES TO EXIST, CHANGES ITS ADDRESS, OWNERSHIP OR NAME, EXPANDS OPERATIONS OR ENGAGES IN ANY ACTIVITY WHICH CHANGES ITS MODE OR CHARACTER, TO COMPLY WITH THE PROVISIONS OF THIS ACT FOR A NEW ESTABLISHMENT LICENSE; TO AMEND SECTION 73-11-56, MISSISSIPPI CODE OF 1972, TO INCREASE FEES FOR CERTAIN SERVICES; TO AMEND SECTION 73-11-57, MISSISSIPPI CODE OF 1972, TO REVISE THE AUTHORITY OF THE BOARD TO SUSPEND, REVOKE OR REFUSE TO ISSUE LICENSE RENEWALS OR TAKE ANY OTHER ACTION AS A

SANCTION AGAINST LICENSEES IN VIOLATION OF THIS ACT; TO PRESCRIBE PROCEDURES OF THE BOARD FOR CONDUCTING ADMINISTRATIVE PROCEEDINGS; TO AMEND SECTION 73-11-69, MISSISSIPPI CODE OF 1972, TO REQUIRE LICENSURE BY THE BOARD OF PERSONS MAINTAINING, MANAGING OR OPERATING A CREMATORY; TO REQUIRE THE CONSPICUOUS DISPLAY OF A LICENSE BY SUCH PERSONS OPERATING A CREMATORY; TO REQUIRE CREMATORY RETORT OPERATORS TO HOLD A CURRENT FUNERAL SERVICE OR FUNERAL DIRECTOR LICENSE ISSUED BY THE BOARD; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 73-11-41, Mississippi Code of 1972, is amended as follows:

73-11-41. The following terms shall have the meanings ascribed herein unless the context shall otherwise require:

(a) "Alternative container" means an unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

(b) "Board" means the State Board of Funeral Service of the State of Mississippi as created by Section 73-11-43, or any successor thereof.

(c) "Branch establishment" means an auxiliary facility or division of a main funeral establishment licensed under this chapter that is within seventy-five (75) miles of the main facility.

(d) "Casket" is defined as a rigid container that is designed for the encasement of human remains and that is usually constructed of wood, metal, fiberglass, plastic or like material and ornamented and lined with fabric which may or may not be combustible.

(e) "Cremation" shall mean a two-part procedure whereby a dead human body or body parts shall be reduced by direct flame to residue which includes bone fragments and the pulverization of said bone fragments to a coarse powdery consistency.

(f) "Crematory" is defined as any person, partnership or corporation that performs cremation. A crematory must comply with any applicable public health laws and rules and must contain the equipment and meet all of the standards established by the rules and regulations adopted by the board.

(g) "Crematory operator" means the legal entity that operates a crematory and performs cremations.

(h) "Crematory retort operator" means the holder of a Mississippi funeral director or funeral service license who is authorized to operate the retort and perform the cremation process.

(i) "Direct cremation" means a disposition of human remains by cremation without formal viewing, visitation or ceremony with the body present.

(j) "Embalming" means the disinfection of the dead human body by replacing certain body fluids with preserving and disinfecting chemicals.

(k) "Full-time" means a minimum of an eight-hour workday or a minimum of a forty-hour workweek, the compensation from which represents the employee's primary source of income and benefits, with the hours to be between 7:00 a.m. and 9:00 p.m. each day in a funeral establishment properly licensed by the board.

(l) "Funeral establishment" means a fixed place or premise duly licensed by the board that is devoted to or used in the immediate post-death activities of custody, shelter, care, preparation and/or embalming for final disposition of the body; or used for religious services or other rites or ceremonies associated with the final disposition of human dead; or maintained or held out to the public by advertising or otherwise as such, for the convenience and comfort of the bereaved and the community for viewing or other services in connection with the human dead, and

as the office or place for carrying on the profession of funeral service and/or funeral directing.

(m) "Holding facility" means the area within a funeral establishment or crematory facility exclusively used for the preparation (other than embalming) and holding of dead human bodies for burial or final disposition that shall comply with any applicable health law; preserve the dignity of the human remains; recognize the integrity, health and safety of the crematory or establishment authority personnel, and be secure from access by anyone other than authorized personnel.

(n) "Licensee in charge" means a full-time funeral service or funeral director licensee having decision making authority over the funeral establishment or branch thereof, including, but limited to, hiring employees, disciplining employees, and making managerial decisions regarding daily operations.

(o) "Licensee" means a person or entity who holds a license issued by the board.

(p) "License for funeral establishment" means a license issued to a place or premise devoted to or used in the immediate post-death activities of transportation, custody, shelter, care, preparation and/or embalming for final disposition of the body; or used for religious services or other rites or ceremonies associated with the final disposition of human dead; or maintained for the convenience and comfort of the bereaved and the community for viewing or other services in connection with the human dead, and as the office or place for carrying on the profession of funeral service and/or funeral directing.

(q) "License for the practice of funeral directing" means the license given to a person engaging in the "practice of funeral service" who is not engaged in the practice of embalming.

(r) "License for the practice of funeral service" means the license given to a person engaging in the "practice of funeral service," including the practice of embalming.

(s) "Practice of funeral service" means:

(i) Providing shelter, care and custody of the human dead;

(ii) Conducting immediate post-death activities;

(iii) Preparing of the human dead by embalming or other methods for burial or other disposition;

(iv) Being responsible for the transportation of the human dead, bereaved relatives and friends;

(v) Making arrangements, financial or otherwise, for the providing of such services;

(vi) The sale of funeral merchandise; or

(vii) The practice or performance of any function of funeral directing and/or embalming as presently known, including those stipulated herein.

This definition shall not include persons or corporations engaging only in the preneed sale of funeral merchandise or service.

(t) "Resident trainee" means a person who is preparing to become licensed for the practice of funeral service or funeral directing and who is serving under the supervision and instruction of a person duly licensed for the practice of funeral service or funeral directing in this state.

(u) "Retort" means an enclosed space within which the cremation process takes place.

(v) "Trade embalmer" means an embalmer who does embalming for a licensed funeral establishment by contract or other agreement.

SECTION 2. Section 73-11-47, Mississippi Code of 1972, is amended as follows:

73-11-47. The board shall hold not less than two (2) meetings annually for the purpose of conducting the business of the board and for examining applications for licenses. Four (4) or more members shall comprise a quorum. Any member who shall not attend two (2) consecutive meetings of the board <u>without cause</u> shall be subject to removal by the Governor. The chairman of the board shall notify the Governor in writing when any such member has failed to attend two (2) consecutive regular meetings.

SECTION 3. Section 73-11-49, Mississippi Code of 1972, is amended as follows:

73-11-49. (1) The board is authorized to select from its own membership a chairman, vice chairman and secretary-treasurer. Election of officers shall be held at the first regularly scheduled meeting of the fiscal year.

(2) All members of the board shall be reimbursed for their necessary traveling expenses and mileage incident to their attendance upon the business of the board, as provided in Section 25-3-41, and shall receive a per diem as provided in Section 25-3-69 for every day actually spent upon the business of the board, not to exceed twenty (20) days per year unless authorized by a majority vote of the board.

(3) All monies received by the board shall be paid into a special fund in the State Treasury to the credit of the board and shall be used by the board for paying the traveling and necessary expenses and per diem of the members of the board while on board business, and for paying other expenses necessary for the operation of the board in carrying out and involving the provisions of this chapter.

(4) The board shall employ an administrator of the board, who shall have complete supervision and be held responsible for the direction of the office of the board, shall have supervision over field inspections and enforcement of the provisions of this chapter, shall have such other duties as may be assigned by the

board, shall be responsible and answerable to the board. The board may employ such other clerical assistants and employees as may be necessary to carry out the provisions of this chapter, and the terms and conditions of such employment shall be determined by the board in accordance with applicable state law and rules and regulations of the State Personnel Board.

(5) The board, when it shall deem necessary, shall be represented by an assistant attorney general duly appointed by the Attorney General of this state, and may also request and receive the assistance of other state agencies and county and district attorneys, all of whom are authorized to provide the assistance requested.

(6) The board shall have subpoena power in enforcing the provisions of this chapter.

(7) The board shall adopt and promulgate rules and regulations for the transaction of its business in accordance with the provisions of the Mississippi Administrative Procedures Law (Section 25-43-1 et seq.). No rule or regulation promulgated by the board affecting any person or agency outside the board shall be adopted, amended or repealed without a public hearing on the proposed action. *** * ***

(8) The board may designate the administrator to perform inspections under this chapter, may employ an individual to perform such inspections or may contract with any other individual or entity to perform such inspections. Any individual or entity that performs such inspections shall have the right of entry into any place in which the business or practice of funeral service and/or funeral directing is carried on or advertised as being carried on, for the purpose of inspection, for the investigation of complaints coming before the board and for such other matters as the board may direct.

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SECTION 4. Section 73-11-51, Mississippi Code of 1972, is amended as follows:

73-11-51. (1) No person shall engage in the business or practice of funeral service, including embalming, and/or funeral directing or hold himself out as transacting or practicing or being entitled to transact or practice funeral service, including embalming, and/or funeral directing in this state unless duly licensed under the provisions of this chapter.

(2) The board is authorized and empowered to examine applicants for licenses for the practice of funeral service and funeral directing and shall issue the proper license to those persons who successfully pass the applicable examination and otherwise comply with the provisions of this chapter.

(3) To be licensed for the practice of funeral directing under this chapter, a person must furnish satisfactory evidence to the board that he or she:

(a) Is at least eighteen (18) years of age;

(b) Has a high school diploma or the equivalent thereof;

(c) Has served as a resident trainee for not less than twenty-four (24) months under the supervision of a person licensed for the practice of funeral service or funeral directing in this state;

(d) Has successfully passed a written and/or oral examination as prepared or approved by the board; * * *

(e) Is of good moral character; and

(f) Meets the requirements established by the rules and regulations of the board.

(4) To be licensed for the practice of funeral service under this chapter, a person must furnish satisfactory evidence to the board that he or she:

(a) Is at least eighteen (18) years of age;

(b) Has a high school diploma or the equivalent thereof;

(c) Has successfully completed twelve (12) months or more of academic and professional instruction from an institution accredited by the United States Department of Education for funeral service education and have a certificate of completion from an institution accredited by the American Board of Funeral Service Education or any other successor recognized by the United States Department of Education for funeral service education;

(d) Has served as a resident trainee for not less than twelve (12) months, either before or after graduation from an accredited institution mentioned above, under the supervision of a person licensed for the practice of funeral service in this state and in an establishment licensed in this state;

(e) Has successfully passed the National Conference of Funeral Examiners examination and/or such other examination as approved by the board; * * *

(f) Be of good moral character; and

(g) Meets the requirements established by the rules and regulations of the board.

(5) All applications for examination and license for the practice of funeral service or funeral directing shall be upon forms furnished by the board and shall be accompanied by an examination fee, a licensing fee and a nonrefundable application fee in amounts fixed by the board in accordance with Section 73-11-56. The fee for an initial license, however, may be prorated in proportion to the period of time from the date of issuance to the date of biennial license renewal prescribed in subsection (8) of this section. All applications for examination shall be filed with the board office at least sixty (60) days before the date of examination. A candidate shall be deemed to have abandoned the application for examination if he does not

appear on the scheduled date of examination unless such failure to appear has been approved by the board.

(6) The practice of funeral service or funeral directing must be engaged in at a licensed funeral establishment, at least one (1) of which is listed as the licensee's place of business; and no person, partnership, corporation, association or other organization shall open or maintain a funeral establishment at which to engage in or conduct or hold himself or itself out as engaging in the practice of funeral service or funeral directing until such establishment has complied with the licensing requirements of this chapter. A license for the practice of funeral service or funeral directing shall be used only at licensed funeral establishments; however, this provision shall not prevent a person licensed for the practice of funeral service or funeral directing from conducting a funeral service at a church, a residence, public hall, lodge room or cemetery chapel, if such person maintains a fixed licensed funeral establishment of his own or is in the employ of or an agent of a licensed funeral establishment.

(7) Any person holding a valid, unrevoked and unexpired nonreciprocal license in another state or territory having requirements greater than or equal to those of this state as determined by the board may apply for a license to practice in this state by filing with the board a certified statement from the secretary of the licensing board of the state or territory in which the applicant holds his license certifying to his qualifications and good standing with that board. Any such person must also successfully pass a written and/or oral examination * * * approved by the board, and must pay a nonrefundable application fee set by the board * * *. If the board finds that the applicant has fulfilled the aforesaid requirements and has fulfilled substantially similar requirements of those required for a Mississippi licensee, the board shall

grant such license upon receipt of a fee in an amount equal to the renewal fee set by the board for a license for the practice of funeral service or funeral directing, as the case may be, in this state. The board may issue a temporary funeral service or funeral directing work permit before a license is granted, before the next regular meeting of the board, if the applicant for a reciprocal license has complied with all requirements, rules and regulations of the board. The temporary permit will expire at the next regular meeting of the board.

(8) (a) Except as provided in Section 33-1-39, any person holding a license for the practice of funeral service or funeral directing may have the same renewed for a period of two (2) years by making and filing with the board an application on or before the due date. Payment of the renewal fee shall be in an amount set by the board in accordance with Section 73-11-56. The board shall mail the notice of renewal and the due date for the payment of the renewal fee to the last known address of each licensee at least thirty (30) days before that date. It is the responsibility of the licensee to notify the board in writing of any change of address. An application will be considered late if the application and proper fees are not in the board's office or postmarked by the due date. Failure of a license holder to receive the notice of renewal shall not exempt or excuse a license holder from the requirement of renewing the license on or before the license expiration date.

(b) If the renewal fee is not paid on or postmarked by the due date, the license of such person shall by operation of law automatically expire and become void without further action of the board. The board may reinstate such license if application for licensure is made within a period of five (5) years, upon payment of the renewal fee for the current year, all renewal fees in arrears and other applicable fees in arrears * * *. After a period of five (5) years, the licensee must make application, pay

the current renewal fee, all fees in arrears, * * * pass a written and/or oral examination as prepared or approved by the board and meet the requirements established by the rules and regulations of the board.

(9) No license shall be assignable or valid for any person other than the original licensee.

(10) The board may, in its discretion, if there is a major disaster or emergency where human death is likely to occur, temporarily authorize the practice of funeral directing and funeral service by persons licensed to practice in another state but not licensed to practice in this state, provided that such services are only rendered by members of disaster mortuary teams authorized by federal or appropriate local authorities to provide such services. Only persons licensed in this state, however, may sign death certificates.

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(11) Any funeral service technology or mortuary science program accredited by the American Board of Funeral Service Education in the State of Mississippi, as well as students enrolled in such a program, shall be exempt from licensing under this chapter when embalming or otherwise preparing a deceased human body for disposition as part of a student practicum experience, when the student is directly supervised by an instructor or preceptor who holds a current funeral service license. This exemption shall apply to practicum experiences performed at an accredited institution of funeral service technology or mortuary science program or at a duly licensed funeral establishment or commercial mortuary service. Nothing in this subsection shall be construed to allow any funeral service technology or mortuary science program, or those students enrolled in such a program, to engage in practicum experiences for remuneration.

(12) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

SECTION 5. Section 73-11-53, Mississippi Code of 1972, is amended as follows:

73-11-53. (1) A person desiring to become a resident trainee for the practice of funeral service or funeral directing shall make application to the board. Such application shall be verified by the licensee under whom the applicant is serving, and shall be accompanied by a nonrefundable application fee in an amount set by the board in accordance with Section 73-11-56. When the board is satisfied as to the qualifications of an applicant, it shall issue a certificate of resident traineeship. *** * ***

(2) The board shall have the power to suspend or revoke a certificate of a resident traineeship for violation of any provision of this chapter.

(3) A resident trainee must serve the apprenticeship in a funeral establishment that is licensed by the State of Mississippi and the preceptor must be a Mississippi licensee who is employed by a Mississippi licensed funeral establishment.

(4) A resident traineeship certificate shall be renewable upon payment of a renewal fee as set by the board. *** * *** The fee and application will be considered late if the fee and application are not in the office or show a postmark of December 31. Applications received late may be reinstated by the payment of a renewal fee and a reinstatement fee and other applicable fees. Failure to receive a renewal notice does not exempt a resident trainee from the required renewal of his/her traineeship.

SECTION 6. Section 73-11-55, Mississippi Code of 1972, is amended as follows:

73-11-55. (1) No person or party shall conduct, maintain, manage or operate a funeral establishment or branch thereof unless a license for each such establishment has been issued by the board

and is conspicuously displayed in such funeral establishment. In case of funeral services held in any private residence, church, cemetery, cemetery chapel, cemetery facility, or lodge hall, no license shall be required.

(2) To be licensed as a funeral establishment, a place or premise must be at a fixed and specified address or location and must be used for immediate post-death activities, whether used for the custody, shelter, care, preparation and/or embalming of the human dead. Every funeral establishment shall be under the charge and personal supervision of a Mississippi funeral director licensee or a Mississippi funeral service licensee and shall meet the requirements established by the rules and regulations of the board. Each licensed funeral establishment shall be inspected at least once during each licensing period. Such inspections may be unannounced. After inspection of a funeral establishment, if the board cites the funeral establishment for failure to comply with any provision of this chapter or a rule or regulation of the board, the funeral establishment shall resolve the violation to the satisfaction of the board and be in full compliance with this chapter and board rules and regulations not later than thirty (30) days after the board files the inspection report.

No mobile home, modular units, manufactured home, and/or similar mobile unit shall be used for the performance of any function or service of a funeral establishment except in case of emergency as prescribed by the board. A mobile home, modular unit, manufactured home, and/or similar mobile unit that is/are licensed as a funeral establishment on or before July 1, 2008, shall be exempt from the restriction provided in this paragraph. If the mobile home, modular unit, manufactured home, or similar mobile unit funeral establishment is sold, leased or relocated, ceases to exist, changes address, changes ownership, changes names, enlarges its operation, and/or engages in any activity that changes its mode or character of operation, then this exemption

shall not apply and such establishment must meet all of the requirements of this chapter and the rules and regulations of the board for a new establishment license. In addition to such other powers, the board shall have the power to adopt, amend, and repeal rules and regulations to carry out the provisions of this paragraph.

(3) (a) A funeral establishment must contain a preparation and/or embalming room, adequate casket and/or vault selection room, * * * holding facilities and proper room or rooms in which rites and ceremonies may be held. A funeral establishment shall be subject to an inspection at least once during a two-year license period. Each new establishment must be inspected before the opening. All portions of each facility licensed under this section shall be kept in a clean and sanitary condition.

(b) A branch establishment must contain an office and/or an arrangement room, and a room for viewing and/or a chapel or proper place for ceremonies and meet the requirements established by the rules and regulations of the board. A branch establishment need not meet all requirements specified in paragraph (a) of this subsection and need not be under the personal supervision of a Mississippi funeral director licensee or a Mississippi funeral service licensee.

If the branch meets all requirements of a funeral establishment as specified in paragraph (a) of this subsection, such establishment must be under the charge and personal supervision of a Mississippi funeral director licensee or a Mississippi funeral service licensee.

(c) A commercial mortuary service is a funeral establishment that embalms and transports for licensed funeral establishments and does not sell any services or merchandise directly or at retail to the public.

(4) Applications for funeral establishment licenses, branch establishment licenses or commercial mortuary service licenses

shall be made on blanks furnished by the board and shall be accompanied by a fee in an amount fixed by the board under Section 73-11-56. All establishment licenses shall be issued for a period of two (2) years, except initial licenses may be prorated from the date of issuance to the next renewal date.

Renewal funeral establishment and branch establishment license applications and license fees shall be due and payable to the board on or before the expiration date of the license. The board shall mail the notice of renewal and the due date for payment of the renewal fee at least thirty (30) days before that date. Failure of the license holder to receive the notice of renewal shall not exempt or excuse the holder from the requirement of renewing the license on or before the license expiration date.

(5) If the renewal fee is not paid on or postmarked by the due date, the license shall by operation of law automatically expire and become void without further action of the board. All establishments whose licenses have expired under this section may be reinstated by filing with the board an application for reinstatement, submitting to an inspection during which time the licensee in charge of such establishment shall be interviewed by the board or its designee and by paying all renewal fees, * * * a reinstatement fee and other applicable fees, and meeting the requirements established by the rules and regulations of the board.

(6) No license shall be assignable or transferable or valid for any establishment other than the original licensee. License fees and application fees are nonrefundable.

(7) A license for each new establishment shall not be issued until an inspection has been made, license and inspection fees have been paid, and the licensee in charge and/or owners of such establishment has been interviewed by the board or its designee.

(8) The board is authorized to establish rules and regulations for the issuance of a special funeral establishment work permit.

SECTION 7. Section 73-11-56, Mississippi Code of 1972, is amended as follows:

73-11-56. On or before October 1 of each year, the board shall determine the amount of funds that will be required during the next ensuing two (2) years to properly administer the laws which the board is directed to enforce and administer and by rule and regulation shall fix fees in such reasonable sums as may be necessary for such purposes within the following limitations:

Funeral establishment:

Application fee for a new or change of ownership ..... establishment.....$1,000.00

Inspection fee, * * * $75.00

* * *

Renewal application and license fee.....$300.00

Commercial mortuary service license fee for a new or change of ownership.....$1,000.00

Renewal application and license fee.....$300.00

Crematory application fee for a new or change of ownership.....$1,000.00

Renewal application and license fee, * * *.....$300.00

* * *

Special work permit.....$150.00

Funeral service:

Initial application fee * * *.....$ 50.00

Reciprocal application fee * * *.....$200.00

* * *

Renewal license and application fee * * *.....$125.00

Work permit * * *.....$ 50.00

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Funeral director:

Initial application fee * * *.....$ 50.00

Reciprocal application fee * * *.....$200.00

License fee * * *.....$ 50.00

Renewal license and application fee * * *.....$100.00

Work permit * * *.....$ 50.00

* * *

Resident trainee certificate:

Funeral service application fee * * *.....$ 50.00

Funeral director application fee * * *.....$ 50.00

Funeral service renewal application fee * * *.....$ 50.00

Funeral director renewal application fee * * *.....$ 50.00

Other fees:

Duplicate license fee * * *.....$ 25.00

Reinstatement of lapsed license fee, equal to the amount of the applicable license fee (or the amount of the application fee for the resident trainees).

Late fee equal to the amount of the applicable license fee (or the amount of the application fee for the resident trainees).

Public records of the board per page.....$ 1.00

All licenses will have a reinstatement and late fee added to the renewal fee if the payment is not in the board's office or postmarked by the due date.

At least thirty (30) days prior to the expiration date of any license issued by the board, the board shall notify the licensee of the applicable renewal fee therefor.

SECTION 8. Section 73-11-57, Mississippi Code of 1972, is amended as follows:

73-11-57. (1) The board, upon satisfactory proof and in accordance with the provisions of this chapter and the regulations of the board, may suspend, revoke, or refuse to issue or renew any license hereunder, reprimand or place the holder of a license on a term of probation, and/or take any other action in relation to a

license as the board may deem proper under the circumstances upon any of the following grounds:

(a) The employment of fraud or deception in applying for a license or in passing the examination provided for in this chapter;

(b) The erroneous issuance of a license to any person;

(c) The conviction of a felony or having pled guilty of a felony in any court in this state or any federal court or by the court of any other state or territory of the United States or any other country. Conviction, as used in this paragraph, shall include a deferred conviction, deferred prosecution, deferred sentence, finding or verdict of guilt, an admission of guilty, or a plea of nolo contendere;

(d) The practice of embalming under a false name or without a license for the practice of funeral service;

(e) The impersonation of another funeral service or funeral directing licensee;

(f) The permitting of a person other than a funeral service or funeral directing licensee to make arrangements for a funeral and/or form of disposition;

(g) Violation of any provision of this chapter or any rule or regulation of the board;

(h) Having had a license for the practice of funeral service or funeral directing suspended or revoked in any jurisdiction, having voluntarily surrendered his license in any jurisdiction, having been placed on probation in any jurisdiction, having been placed under disciplinary order(s) or other restriction in any manner for funeral directing and/or funeral service, or operating a funeral establishment (a certified copy of the order of suspension, revocation, probation or disciplinary action shall be prima facie evidence of such action);

(i) Solicitation of dead human bodies by the licensee, his agents, assistants or employees, whether such solicitation

occurs after death or when death is imminent; if the person solicited has made known a desire not to receive the communication, or if the solicitation involves coercion, duress or harassment, or if the solicitation takes place at the residence of the client or prospective client and is uninvited by the client or prospective client and has not been previously agreed to by the client or prospective client; however, this shall not be deemed to prohibit general advertising;

(j) Employment directly or indirectly of any apprentice, agent, assistant, employee, 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 funeral establishment;

(k) Failure to give full cooperation to the board and/or its designees, agents or other representatives in the performance of official duties of the board. Such failure to cooperate includes, but is not limited to:

(i) Not furnishing any papers or documents requested by or for the board;

(ii) Not furnishing, in writing, a full and complete explanation covering the matter contained in a complaint filed with the board;

(iii) Not responding to subpoenas issued by the board, whether or not the licensee is the party charged in any preceding before the board;

(iv) Not providing access, as directed by the board for its authorized agents or representatives seeking to perform reviews or inspections at facilities or places utilized by the license holder in the practice of funeral service or funeral directing and/or in performing any other activity regulated by the board pursuant to this chapter;

(v) Failure to provide information within the specified time allotted and as required by the board and/or its representatives or designees;

(vi) Failure to cooperate with the board or its designees or representatives in the investigation of any alleged misconduct or interfering with a board investigation by willful misrepresentation of facts;

(vii) Deceiving or attempting to deceive the board regarding any matter under investigation, including altering or destroying any records; and

(viii) Failure, without good cause, to cooperate with any request by the board to appear before it.

(l) Knowingly performing any act that in any way assists an unlicensed person to practice funeral service or funeral directing;

(m) Knowingly making a false statement on death certificates; *** * ***

(n) Conviction of a crime involving moral turpitude;

(o) Violating any statute, ordinance, rule, or regulation of the state or any of its boards, agencies or political subdivisions affecting the registration of deaths or the handling, custody, care, or transportation of dead human bodies; or

(p) Unprofessional conduct in the practice of funeral service or funeral directing which includes, but is not limited to:

(i) Retaining a dead human body for the payment of a fee for the performance of services that are not authorized;

(ii) Knowingly performing any act which in any way assists an unlicensed person to practice funeral service or funeral directing;

(iii) Being guilty of any dishonorable conduct likely to deceive, defraud or harm the public;

(iv) Any act or omission in the practice of funeral service or directing which constitutes dishonesty, fraud or misrepresentation with the intent to benefit the licensee, another person or funeral establishment, or with the intent to substantially injure another person, licensee or funeral establishment; or

(v) Any act or conduct, whether the same or of a different character than specified above, which constitutes or demonstrates bad faith, incompetency or untrustworthiness; or dishonest, fraudulent or improper dealing; or any other violation of the provisions of this chapter, the rules and regulations established by the board or any rule or regulation promulgated by the Federal Trade Commission relative to the practice of funeral service or funeral directing.

(2) Any person, including a member of the board, may initiate a complaint against a licensee of the board by filing with the board a written complaint on a form prescribed by the board.

(a) Upon receipt of a properly verified complaint, the board shall send a copy of the complaint to the affected licensee by certified mail to the address of such licensee appearing on record with the board. The licensee shall make answer to the complaint in writing within twenty (20) days after receipt of the complaint. The licensee shall mail a copy of his, her or its response to the board and the complainant. Upon receipt of the licensee's response or lapse of twenty (20) days, the board is authorized to investigate a complaint that appears to show the existence of any of the causes or grounds for disciplinary action as provided in Section 73-11-57. Upon a finding of reasonable cause to believe that the charges are not frivolous, unfounded or filed in bad faith, the board may, in its discretion, cause a hearing to be held, at a time and place fixed by the board, regarding the charges that a violation of this chapter has

occurred. The board shall order a hearing for the licensee to appear and show cause why the individual should not be disciplined for a violation of this chapter.

(b) The board shall give the complainant and the affected licensee twenty (20) days notice of any hearing upon a complaint. Such notice shall be by United States certified mail.

(c) Any party appearing before the board may be accompanied by counsel.

(d) Before commencing a hearing, the chair or designee of the board shall determine if all parties are present and ready to proceed. If the complainant fails to attend a hearing without good cause shown, the complaint shall be dismissed summarily and all fees and expenses of convening the hearing shall be assessed to, and paid by, the complainant. If any affected licensee fails to appear for a hearing without good cause shown, such licensee shall be presumed to have waived his right to appear before the board and be heard.

(i) Upon the chair's determination that all parties are ready to proceed, the chair or designee shall call the hearing to order and the complainant and the licensee may give opening statements. The board may order the sequestration of nonparty witnesses.

(ii) The complainant shall then present his, her or its complaint. The licensee, any counsel and any member or designee of the board may ask questions of witnesses.

(iii) The licensee shall then present his, her or its case in rebuttal. The complainant, any counsel and any member or designee of the board may ask questions of witnesses.

(iv) At the completion of the evidence, all parties may give closing statements.

(v) At the conclusion of the hearing, the board may either decide the issue at that time or take the case under advisement for further deliberation. The board shall render

its decision not more than ninety (90) days after the close of the hearing and shall forward the decision to the last known business or residence address of the parties.

(3) The board, on its own motion, may file a formal complaint against a licensee.

(4) The board may, upon satisfactory proof that the applicant or licensee has been guilty of any of the offenses above enumerated, take the action authorized by this section against an applicant or licensee of the board upon a majority vote of the board members, after a hearing thereon. The board is vested with full power and authority to hold and conduct such hearings, compel the attendance of witnesses and the production of books, records and documents, issue subpoenas therefor, administer oaths, examine witnesses, and do all things necessary to properly conduct such hearings. The board may waive the necessity of a hearing if the person accused of a violation admits that he has been guilty of such offense. Any person who has been refused a license or whose license has been revoked or suspended may, within thirty (30) days after the decision of the board, file with the board a written notice stating that he feels himself aggrieved by such decision and may appeal therefrom to the circuit court of the county and judicial district of residence of the person, or if the person is a nonresident of the State of Mississippi, to the Circuit Court of the First Judicial District of Hinds County. The appeal to the circuit court shall be on the record made before the board, including a transcript of the board proceedings. The circuit court shall * * * determine * * * whether the action of the board was in accord or consistent with law, or was arbitrary, unwarranted or in abuse of discretion. The appeal shall be perfected upon filing notice of the appeal with the circuit court and by the prepayment of all costs, including the cost of the preparation of the record of the proceedings by the board. An appeal from the circuit court judgment or decree may be reviewed

by the Supreme Court as is provided by law for other appeals. An appeal of a decision or order of the board does not act as a supersedeas.

(5) In addition to any other power that it has, the board may, upon finding that an applicant or licensee has committed any of the violations listed in Section 73-11-57(1), impose a monetary penalty, as follows:

(a) For the first violation of any of the subparagraphs of subsection (1) of this section, a monetary penalty of not more than Five Hundred Dollars ($500.00).

(b) For the second violation of any of the subparagraphs of subsection (1) of this section, a monetary penalty of not more than One Thousand Dollars ($1,000.00).

(c) For the third and any subsequent violation of any of the subparagraphs of subsection (1) of this section, a monetary penalty of not more than Five Thousand Dollars ($5,000.00).

(d) For any violation of any of the subparagraphs of subsection (1) of this section, those reasonable costs that are expended by the board in the investigation and conduct of a proceeding for licensure revocation or suspension, including, but not limited to, the cost of process service, court reporters, expert witnesses and investigators.

(6) The power and authority of the board to assess and levy such monetary penalties hereunder shall not be affected or diminished by any other proceeding, civil or criminal, concerning the same violation or violations except as provided in this section.

(7) A licensee shall have the right of appeal from the assessment and levy of a monetary penalty as provided in this section under the same conditions as a right of appeal is provided elsewhere for appeals from an adverse ruling, order or decision of the board.

(8) Any monetary penalty assessed and levied under this section shall not take effect until after the time for appeal shall have expired.

(9) A monetary penalty assessed and levied under this section shall be paid to the board by the licensee upon the expiration of the period allowed for appeal of such penalties under this section or may be paid sooner if the licensee elects.

With the exception of subsection (3)(d) of this section, monetary penalties collected by the board under this section shall be deposited in the State Treasury to the credit of the State Board of Funeral Service. Any monies collected by the board under subsection (3)(d) of this section shall be deposited into the special fund operating account of the board.

(10) When payment of a monetary penalty assessed and levied by the board against a licensee in accordance with this section is not paid by the licensee when due under this section, the board shall have power to institute and maintain proceedings in its name for enforcement of payment in the chancery court of the county and judicial district of residence of the licensee, or if the licensee is a nonresident of the State of Mississippi, in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

(11) In any administrative judicial proceeding involving the board, the board shall have the right to recover attorney fees.

(12) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in

suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SECTION 9. Section 73-11-69, Mississippi Code of 1972, is amended as follows:

73-11-69. (1) No person <u>or party</u> shall <u>conduct, maintain, manage or operate a crematory unless a license for such crematory has been issued by the board and is conspicuously displayed in such crematory</u>.

(2) The operator of a crematory facility shall issue a certificate of cremation to the family of each person cremated in the facility. In addition, the operator of the crematory facility shall maintain a log of all cremations performed in the facility, and this log shall match the certificates of cremation that have been issued by the facility.

(3) No operator of a crematory facility shall knowingly represent that an urn or temporary container contains the recovered cremated remains of specific decedent or of body parts removed from a specific decedent when it does not. This subsection does not prohibit the making of such a representation because of the presence in the recovered cremated remains of de minimis amounts of the cremated remains of another decedent or of body parts.

(4) The board shall inspect each licensed crematory facility during each licensure period, and at such other times as necessary, to verify that the crematory facility is in compliance

with the requirements of this section. Any person who operates a crematory facility in this state without a license, or any person who otherwise violates any provision of this section, is guilty of a felony. Upon conviction for a violation of this section, in addition to any penalty that may be imposed by the court, the board may revoke the person's crematory facility license.

(5) The board may promulgate such rules and regulations as deemed necessary for the proper licensure and regulation of crematory facilities in this state.

(6) Any crematory or funeral establishment may dispose of any remains unclaimed by the family after twelve (12) months after cremation by scattering or burial upon a final notification to the next of kin by certified mail to their last known address.

(7) The crematory retort operator must be a current holder of a funeral service or funeral director license issued by the board.

SECTION 10. This act shall take effect and be in force from and after July 1, 2008.