

2 SHB 1251 - H AMD 0009 FAILED 3/16/99
3 By Representatives

4

5 On page 9, after line 25, insert the following:

6

"PART 2

7

FUNERAL AND CEMETERY BOARD

8 **Sec. 201.** RCW 18.39.010 and 1989 c 390 s 1 are each amended to
9 read as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter.

12 (1) "Funeral director" means a person engaged in the profession or
13 business of conducting funerals and supervising or directing the burial
14 and disposal of dead human bodies.

15 (2) "Embalmer" means a person engaged in the profession or business
16 of disinfecting, preserving or preparing for disposal or transportation
17 of dead human bodies.

18 (3) "Two-year college course" means the completion of sixty
19 semester hours or ninety quarter hours of college credit, including the
20 satisfactory completion of certain college courses, as set forth in
21 this chapter.

22 (4) "Funeral establishment" means a place of business licensed in
23 accordance with RCW 18.39.145, conducted at a specific street address
24 or location, and devoted to the care and preparation for burial or
25 disposal of dead human bodies and includes all areas of such business
26 premises and all tools, instruments, and supplies used in preparation
27 and embalming of dead human bodies for burial or disposal.

28 (5) "Director" means the director of licensing.

29 (6) "Board" means the ((state)) funeral and cemetery board ((of
30 ~~funeral directors and embalmers~~)) created pursuant to RCW 18.39.173.

31 (7) "Prearrangement funeral service contract" means any contract
32 under which, for a specified consideration, a funeral establishment
33 promises, upon the death of the person named or implied in the
34 contract, to furnish funeral merchandise or services.

1 (8) "Funeral merchandise or services" means those services normally
2 performed and merchandise normally provided by funeral establishments,
3 including the sale of burial supplies and equipment, but excluding the
4 sale by a cemetery of lands or interests therein, services incidental
5 thereto, markers, memorials, monuments, equipment, crypts, niches, or
6 vaults.

7 ~~((9) "Qualified public depository" means a depository defined by
8 RCW 39.58.010, a credit union as governed by chapter 31.12 RCW, a
9 mutual savings bank as governed by Title 32 RCW, a savings and loan
10 association as governed by Title 33 RCW, or a federal credit union or
11 a federal savings and loan association organized, operated, and
12 governed by any act of congress, in which prearrangement funeral
13 service contract funds are deposited by any funeral establishment.))~~

14 Words used in this chapter importing the singular may be applied to
15 the plural of the person or thing, words importing the plural may be
16 applied to the singular, and words importing the masculine gender may
17 be applied to the female.

18 **Sec. 202.** RCW 18.39.145 and 1986 c 259 s 61 and 1985 c 7 s 40 are
19 each reenacted and amended to read as follows:

20 The board shall issue a funeral establishment license to any
21 person, partnership, association, corporation, or other organization to
22 operate a funeral establishment, at specific locations only, which has
23 met the following requirements:

24 (1) The applicant has designated the name under which the funeral
25 establishment will operate and has designated locations for which the
26 general establishment license is to be issued;

27 (2) The applicant is licensed in this state as a funeral director
28 and as an embalmer, or employs at least one person with both such
29 qualifications or one licensed funeral director and one embalmer who
30 will be in service at each designated location;

31 (3) The applicant has filed an application with the director as
32 required by this chapter and paid the required filing fee therefor as
33 fixed by the director pursuant to RCW 43.24.086;

34 (4) As a condition of applying for a new funeral establishment
35 license, the person or entity desiring to acquire such ownership or
36 control shall be bound by all then existing prearrangement funeral
37 service contracts.

1 The board may deny an application for a funeral establishment
2 license, or issue a conditional license, if disciplinary action has
3 previously been taken against the applicant or the applicant's
4 designated funeral director or embalmer. No funeral establishment
5 license shall be transferable, but an applicant may make application
6 for more than one funeral establishment license so long as all of the
7 requirements are met for each license. All funeral establishment
8 licenses shall expire (~~on June 30, or~~) as (~~otherwise~~) determined by
9 the director.

10 **Sec. 203.** RCW 18.39.173 and 1977 ex.s. c 93 s 8 are each amended
11 to read as follows:

12 (~~There is hereby established a state board of funeral directors~~
13 ~~and embalmers to be composed of five members appointed by the governor~~
14 ~~in accordance with this section, one of whom shall be a public member.~~
15 ~~The three members of the state examining committee for funeral~~
16 ~~directors and embalmers, which was created pursuant to RCW 43.24.060,~~
17 ~~as of September 21, 1977 are hereby appointed as members of the board~~
18 ~~to serve for initial terms. The governor shall appoint two additional~~
19 ~~members of the board. Each professional member of the board shall be~~
20 ~~licensed in this state as a funeral director and embalmer and a~~
21 ~~resident of the state of Washington for a period of at least five years~~
22 ~~next preceding appointment, during which time such member shall have~~
23 ~~been continuously engaged in the practice as a funeral director or~~
24 ~~embalmer as defined in this chapter. No person shall be eligible for~~
25 ~~appointment to the board of funeral directors and embalmers who is~~
26 ~~financially interested, directly or indirectly, in any embalming~~
27 ~~college, wholesale funeral supply business, or casket manufacturing~~
28 ~~business.~~

29 All members of the board of funeral directors and embalmers shall
30 be appointed to serve for a term of five years, to expire on July 1 of
31 the year of termination of their term, and until their successors have
32 been appointed and qualified: PROVIDED, That the governor is granted
33 the power to fix the terms of office of the members of the board first
34 appointed so that the term of office of not more than one member of the
35 board shall terminate in any one year. In case of a vacancy occurring
36 on the board, the governor shall appoint a qualified member for the
37 remainder of the unexpired term of the vacant office. Any member of
38 the board of funeral directors and embalmers who fails to properly

1 ~~discharge the duties of a member may be removed by the governor.))~~ A
2 funeral and cemetery board is created to consist of nine members to be
3 appointed by the governor in accordance with this section. The three
4 funeral director and embalmer members of the board of funeral directors
5 and embalmers whose terms expire after 1999 are hereby appointed to
6 serve for initial terms with their year of expiration of term remaining
7 the same. The two members of the cemetery board who have had
8 experience in this state in the active administrative management of a
9 cemetery authority or as a member of the board of directors of a
10 cemetery authority whose terms expire after 1999 are hereby appointed
11 to serve for initial terms with their year of expiration of term
12 remaining the same. A third member who has had experience in this
13 state in the active administrative management of a cemetery authority
14 or as a member of the board of directors of a cemetery authority shall
15 be appointed with a term to expire in 2003. Three public members shall
16 be appointed with terms to expire in 2001, 2002, and 2003. These
17 appointments may cause no more than three terms to expire in any given
18 year.

19 A member of the board must be appointed to serve for a term of four
20 years, to expire on July 1st of the year of termination of the member's
21 term. A member shall hold office until the expiration of the term for
22 which the member is appointed or until a successor has been appointed
23 and qualified. In case of a vacancy occurring on the board, the
24 governor shall appoint a qualified member for the remainder of the
25 unexpired term of the vacant office. A member of the board who fails
26 to properly discharge the duties of a member may be removed by the
27 governor.

28 Three members of the board must be persons who have had experience
29 in this state in the active administrative management of a cemetery
30 authority or as a member of the board of directors of a cemetery
31 authority for a period of five years preceding appointment. Three
32 members of the board must each be licensed in this state as funeral
33 directors and embalmers and must have been continuously engaged in the
34 practice as funeral directors and embalmers for a period of five years
35 preceding appointment. Three members must represent the general public
36 and may not have a connection with the funeral or cemetery industry.
37 Two of these public members shall be persons who have professional,
38 legal, accounting, or trust investment experience that is relevant to
39 the duties of the board. A member of the board must have been a

1 resident of the state of Washington for a period of at least five years
2 preceding appointment.

3 The board shall meet once annually to conduct its business and to
4 elect a ((chairman)) chair, vice ((chairman)) chair, and ((secretary
5 and take official board action on pending matters by majority vote of
6 all the members of the board of funeral directors and embalmers)) such
7 other officers as the board determines, and at other times when called
8 by the director, the ((chairman)) chair, or a majority of the members.
9 A majority of the members of ((said)) the board ((shall)) at all times
10 constitutes a quorum. A quorum of the board to consider any charges
11 brought under this chapter shall include two of the funeral director
12 and embalmer members of the board. A quorum of the board to consider
13 any charges brought under Title 68 RCW shall include two of the members
14 who have had experience in the active administrative management of a
15 cemetery authority. If funeral director and embalmer or cemetery board
16 members cannot serve due to a conflict of interest, a quorum
17 constituting a majority of the members shall preside over the hearing.

18 A member of the board shall be compensated in accordance with RCW
19 43.03.240 and shall receive travel expenses in accordance with RCW
20 43.03.050 and 43.03.060.

21 **Sec. 204.** RCW 18.39.175 and 1996 c 217 s 6 are each amended to
22 read as follows:

23 ~~((Each member of the board of funeral directors and embalmers shall~~
24 ~~be compensated in accordance with RCW 43.03.240 and shall be reimbursed~~
25 ~~for travel expenses in connection with board duties in accordance with~~
26 ~~RCW 43.03.050 and 43.03.060.))~~

27 The ((state)) board ((of funeral directors and embalmers shall
28 have)) has the following duties and responsibilities under this
29 chapter:

30 (1) To be responsible for the preparation, conducting, and grading
31 of examinations of applicants for funeral director and embalmer
32 licenses;

33 (2) To certify to the director the results of examinations of
34 applicants and certify the applicant as having "passed" or "failed";

35 (3) To make findings and recommendations to the director on any and
36 all matters relating to the enforcement of this chapter;

1 (4) To adopt(~~(, promulgate,)~~) and enforce reasonable rules(~~(-~~
2 ~~Rules regulating the cremation of human remains and permit requirements~~
3 ~~shall be adopted in consultation with the cemetery board))~~);

4 (5) To examine or audit or to direct the examination and audit of
5 prearrangement funeral service trust fund records for compliance with
6 this chapter and rules adopted by the board; and

7 (6) To adopt rules establishing mandatory continuing education
8 requirements to be met by persons applying for license renewal.

9 **Sec. 205.** RCW 18.39.217 and 1985 c 402 s 7 are each amended to
10 read as follows:

11 A permit or endorsement issued by the board or under chapter 68.05
12 RCW is required in order to operate a crematory or conduct a cremation.
13 Conducting a cremation without a permit or endorsement is a
14 misdemeanor. Each such cremation is a separate violation.
15 (~~(Crematories owned or operated by or located on property licensed as~~
16 ~~a funeral establishment shall be regulated by the board of funeral~~
17 ~~directors and embalmers. Crematories not affiliated with a funeral~~
18 ~~establishment shall be regulated by the cemetery board.))~~)

19 **Sec. 206.** RCW 18.39.250 and 1996 c 217 s 8 are each amended to
20 read as follows:

21 (1) Any funeral establishment selling funeral merchandise or
22 services by prearrangement funeral service contract and accepting
23 moneys therefore shall establish and maintain one or more
24 prearrangement funeral service trusts under Washington state law with
25 two or more designated trustees, for the benefit of the beneficiary of
26 the prearrangement funeral service contract or may join with one or
27 more other Washington state licensed funeral establishments in a
28 "master trust" provided that each member of the "master trust" shall
29 comply individually with the requirements of this chapter.

30 (2) Up to ten percent of the cash purchase price of each
31 prearrangement funeral service contract, excluding sales tax, may be
32 retained by the funeral establishment unless otherwise provided in this
33 chapter. If the prearrangement funeral service contract is canceled
34 within thirty calendar days of its signing, then the purchaser shall
35 receive a full refund of all moneys paid under the contract.

36 (3) At least ninety percent of the cash purchase price of each
37 prearrangement funeral service contract, paid in advance, excluding

1 sales tax, shall be placed in the trust established or utilized by the
2 funeral establishment. Deposits to the prearrangement funeral service
3 trust shall be made not later than the twentieth day of the month
4 following receipt of each payment made on the last ninety percent of
5 each prearrangement funeral service contract, excluding sales tax.

6 (4) All prearrangement funeral service trust moneys shall be
7 deposited in an insured account in a (~~qualified~~) public depository,
8 as defined in RCW 39.58.010, or shall be invested in instruments issued
9 or insured by any agency of the federal government if these securities
10 are held in a public depository. The account shall be designated as
11 the prearrangement funeral service trust of the funeral establishment
12 for the benefit of the beneficiaries named in the prearrangement
13 funeral service contracts. The prearrangement funeral service trust
14 shall not be considered as, nor shall it be used as, an asset of the
15 funeral establishment.

16 (5) After deduction of reasonable fees for the administration of
17 the trust, taxes paid or withheld, or other expenses of the trust, all
18 interest, dividends, increases, or accretions of whatever nature earned
19 by a trust shall be kept unimpaired and shall become a part of the
20 trust. Adequate records shall be maintained to allocate the share of
21 principal and interest to each contract. Fees deducted for the
22 administration of the trust shall not exceed one percent per year of
23 the amount in trust. In no instance shall the administrative charges
24 deducted from the prearrangement funeral service trust reduce,
25 diminish, or in any other way lessen the value of the trust so that the
26 services or merchandise provided for under the contract are reduced,
27 diminished, or in any other way lessened.

28 (6) Except as otherwise provided in this chapter, the trustees of
29 a prearrangement funeral service trust shall permit withdrawal of all
30 funds deposited under a prearrangement funeral service contract, plus
31 accruals thereon, under the following circumstances and conditions:

32 (a) If the funeral establishment files a verified statement with
33 the trustees that the prearrangement funeral merchandise and services
34 covered by the contract have been furnished and delivered in accordance
35 therewith; or

36 (b) If the funeral establishment files a verified statement with
37 the trustees that the prearrangement funeral merchandise and services
38 covered by the contract have been canceled in accordance with its
39 terms.

1 (7) Subsequent to the thirty calendar day cancellation period
2 provided for in this chapter, any purchaser or beneficiary who has a
3 revocable prearrangement funeral service contract has the right to
4 demand a refund of the amount in trust.

5 (8) Prearrangement funeral service contracts which have or should
6 have an account in a prearrangement funeral service trust may be
7 terminated by the board if the funeral establishment goes out of
8 business, becomes insolvent or bankrupt, makes an assignment for the
9 benefit of creditors, has its prearrangement funeral service
10 certificate of registration revoked, or for any other reason is unable
11 to fulfill the obligations under the contract. In such event, or upon
12 demand by the purchaser or beneficiary of the prearrangement funeral
13 service contract, the funeral establishment shall refund to the
14 purchaser or beneficiary all moneys deposited in the trust and
15 allocated to the contract unless otherwise ordered by a court of
16 competent jurisdiction. The purchaser or beneficiary may, in lieu of
17 a refund, elect to transfer the prearrangement funeral service contract
18 and all amounts in trust to another funeral establishment licensed
19 under this chapter which will agree, by endorsement to the contract, to
20 be bound by the contract and to provide the funeral merchandise or
21 services. Election of this option shall not relieve the defaulting
22 funeral establishment of its obligation to the purchaser or beneficiary
23 for any amounts required to be, but not placed, in trust.

24 (9) Prior to the sale or transfer of ownership or control of any
25 funeral establishment which has contracted for prearrangement funeral
26 service contracts, any person, corporation, or other legal entity
27 desiring to acquire such ownership or control shall apply to the
28 director in accordance with RCW 18.39.145. Persons and business
29 entities selling or relinquishing, and persons and business entities
30 purchasing or acquiring ownership or control of such funeral
31 establishments shall each verify and attest to a report showing the
32 status of the prearrangement funeral service trust or trusts on the
33 date of the sale. This report shall be on a form prescribed by the
34 board and shall be considered part of the application for a funeral
35 establishment license. In the event of failure to comply with this
36 subsection, the funeral establishment shall be deemed to have gone out
37 of business and the provisions of subsection (8) of this section shall
38 apply.

1 (10) Prearrangement funeral service trust moneys shall not be used,
2 directly or indirectly, for the benefit of the funeral establishment or
3 any director, officer, agent, or employee of the funeral establishment
4 including, but not limited to, any encumbrance, pledge, or other use of
5 prearrangement funeral service trust moneys as collateral or other
6 security.

7 (11)(a) If, at the time of the signing of the prearrangement
8 funeral service contract, the beneficiary of the trust is a recipient
9 of public assistance as defined in RCW 74.04.005, or reasonably
10 anticipates being so defined, the contract may provide that the trust
11 will be irrevocable. If after the contract is entered into, the
12 beneficiary becomes eligible or seeks to become eligible for public
13 assistance under Title 74 RCW, the contract may provide for an election
14 by the beneficiary, or by the purchaser on behalf of the beneficiary,
15 to make the trust irrevocable thereafter in order to become or remain
16 eligible for such assistance.

17 (b) The department of social and health services shall notify the
18 trustee of any prearrangement service trust that the department has a
19 claim on the estate of a beneficiary for long-term care services. Such
20 notice shall be renewed at least every three years. The trustees upon
21 becoming aware of the death of a beneficiary shall give notice to the
22 department of social and health services, office of financial recovery,
23 who shall file any claim there may be within thirty days of the notice.

24 (12) Every prearrangement funeral service contract financed through
25 a prearrangement funeral service trust shall contain language which:

26 (a) Informs the purchaser of the prearrangement funeral service
27 trust and the amount to be deposited in the trust;

28 (b) Indicates if the contract is revocable or not in accordance
29 with subsection (11) of this section;

30 (c) Specifies that a full refund of all moneys paid on the contract
31 will be made if the contract is canceled within thirty calendar days of
32 its signing;

33 (d) Specifies that, in the case of cancellation by a purchaser or
34 beneficiary eligible to cancel under the contract or under this
35 chapter, up to ten percent of the contract amount may be retained by
36 the seller to cover the necessary expenses of selling and setting up
37 the contract;

38 (e) Identifies the trust to be used and contains information as to
39 how the trustees may be contacted.

1 **Sec. 207.** RCW 18.39.300 and 1989 c 390 s 7 are each amended to
2 read as follows:

3 In addition to the grounds for action set forth in RCW (~~(18.130.170~~
4 ~~and 18.130.180)~~) 18.39.410, the board may take the disciplinary action
5 set forth in RCW (~~(18.130.160)~~) 18.39.500 against the funeral
6 establishment's license, the license of any funeral director and/or the
7 funeral establishment's certificate of registration, if the licensee or
8 registrant:

9 (1) Fails to comply with any provisions of this chapter(~~(, chapter~~
10 ~~18.130-RCW,~~) or any proper order or regulation of the board;

11 (2) Is found by the board to be in such condition that further
12 execution of prearrangement contracts could be hazardous to purchasers
13 or beneficiaries and the people of this state;

14 (3) Refuses to be examined, or refuses to submit to examination by
15 the board when required;

16 (4) Fails to pay the expense of an examination; or

17 (5) Is found by the board after investigation or receipt of
18 reliable information to be managed by persons who are incompetent or
19 untrustworthy or so lacking in managerial experience as to make the
20 proposed or continued execution or servicing of prearrangement funeral
21 service contracts hazardous to purchasers, beneficiaries, or to the
22 public.

23 **Sec. 208.** RCW 18.39.800 and 1996 c 217 s 9 are each amended to
24 read as follows:

25 The funeral (~~(directors)~~) and (~~(embalmers)~~) cemetery account is
26 created in the state treasury. All fees and regulatory charges
27 received by the department for licenses, registrations, renewals,
28 certificates, permits, endorsements, license examinations, and
29 (~~(audits)~~) trust fund examinations shall be forwarded to the state
30 treasurer who shall credit the money to the account. All fines and
31 civil penalties ordered by the superior court or fines ordered pursuant
32 to RCW (~~(18.130.160(8))~~) 18.39.500 and 68.05.105 against holders of
33 licenses or registrations issued under the provisions of this chapter
34 shall be paid to the account. All expenses incurred in carrying out
35 the licensing and registration activities of the department of
36 licensing and the (~~(state funeral directors and embalmers)~~) board under
37 this chapter shall be paid from the account as authorized by
38 legislative appropriation. Any residue in the account shall be

1 accumulated and shall not revert to the general fund at the end of the
2 biennium. All earnings of investments of balances in the account shall
3 be credited to the general fund. Any fund balance remaining in the
4 ~~((health professions))~~ funeral directors and embalmers account
5 attributable to the funeral director and embalmer professions as of
6 July 1, ~~((1993))~~ 1999, and any fund balance remaining in the cemetery
7 account as of July 1, 1999, shall be transferred to the funeral
8 ~~((directors))~~ and ~~((embalmers))~~ cemetery account.

9 **Sec. 209.** RCW 68.05.020 and 1953 c 290 s 27 are each amended to
10 read as follows:

11 The term "board" used in this chapter means the funeral and
12 cemetery board.

13 **Sec. 210.** RCW 68.05.095 and 1987 c 331 s 8 are each amended to
14 read as follows:

15 ~~((The board shall elect annually a chairman and vice chairman and
16 such other officers as it shall determine from among its members.))~~
17 The director, in consultation with the board, may employ and prescribe
18 the duties of the ~~((executive secretary))~~ program administrator or
19 manager. The ~~((executive secretary shall))~~ program administrator or
20 manager must have a minimum of five years' experience in either
21 cemetery or funeral management, or both, unless this requirement is
22 waived by the board.

23 **Sec. 211.** RCW 68.05.105 and 1987 c 331 s 10 are each amended to
24 read as follows:

25 The board has the following authority under this chapter:

26 (1) To adopt, amend, and rescind such rules as are deemed necessary
27 to carry out this title;

28 (2) To investigate all complaints or reports of unprofessional
29 conduct as defined in this chapter and to hold hearings;

30 (3) To issue subpoenas and administer oaths in connection with any
31 investigation, hearing, or proceeding held under this title;

32 (4) To take or cause depositions to be taken and use other
33 discovery procedures as needed in any investigation, hearing, or
34 proceeding held under this title;

35 (5) To compel attendance of witnesses at hearings;

1 (6) In the course of investigating a complaint, to conduct practice
2 reviews;

3 (7) To take emergency action pending proceedings by the board;

4 (8) To use the office of administrative hearings as authorized in
5 chapter 34.12 RCW to conduct hearings. However, the board shall make
6 the final decision;

7 (9) To use consultants or individual members of the board to assist
8 in the direction of investigations and issuance of statements of
9 charges. However, those board members shall not subsequently
10 participate in the hearing of the case;

11 (10) To enter into contracts for professional services determined
12 to be necessary for adequate enforcement of this title;

13 (11) To contract with persons or organizations to provide services
14 necessary for the monitoring and supervision of licensees, or
15 authorities who are for any authorized purpose subject to monitoring by
16 the board;

17 (12) To adopt standards of professional conduct or practice;

18 (13) To grant or deny authorities or license applications, and in
19 the event of a finding of unprofessional conduct by an applicant,
20 authority, or license holder, to impose any sanction against a license
21 applicant, authority, or license holder provided by this title;

22 (14) To enter into an assurance of discontinuance in lieu of
23 issuing a statement of charges or conducting a hearing. The assurance
24 shall consist of a statement of the law in question and an agreement to
25 not violate the stated provision. The applicant, holder of an
26 authority to operate, or license holder shall not be required to admit
27 to any violation of the law, nor shall the assurance be construed as
28 such an admission. Violation of an assurance under this subsection is
29 grounds for disciplinary action;

30 (15) To revoke the license or authority;

31 (16) To suspend the license or authority for a fixed or indefinite
32 term;

33 (17) To restrict or limit the license or authority;

34 (18) To censure or reprimand;

35 (19) To cause compliance with conditions of probation for a
36 designated period of time;

37 (20) To fine for each violation of this title, not to exceed one
38 thousand dollars per violation. Funds received shall be placed in the
39 funeral and cemetery account;

1 (21) To order corrective action.

2 Any of the actions under this section may be totally or partly
3 stayed by the board. In determining what action is appropriate, the
4 board must first consider what sanctions are necessary to protect or
5 compensate the public. All costs associated with compliance with
6 orders issued under this section are the obligation of the license or
7 authority holder or applicant.

8 **Sec. 212.** RCW 68.05.175 and 1987 c 331 s 13 are each amended to
9 read as follows:

10 A permit or endorsement issued by the ((cemetery)) board or under
11 chapter 18.39 RCW is required in order to operate a crematory or
12 conduct a cremation. (~~Crematories owned or operated by or located on
13 property licensed as a funeral establishment shall be regulated by the
14 board of funeral directors and embalmers. Crematories not affiliated
15 with a funeral establishment shall be regulated by the cemetery
16 board.~~)

17 **Sec. 213.** RCW 68.05.195 and 1987 c 331 s 15 are each amended to
18 read as follows:

19 Any person other than persons defined in RCW 68.50.160 who buries
20 or otherwise disposes of cremated remains by land, by air, or by sea
21 shall have a permit or endorsement issued in accordance with RCW
22 (~~68.05.100~~) 18.39.175 and shall be subject to that section.

23 **Sec. 214.** RCW 68.05.205 and 1993 c 43 s 4 are each amended to read
24 as follows:

25 The director with the consent of the ((cemetery)) board shall set
26 all fees for chapters 68.05, 68.20, 68.24, 68.28, 68.32, 68.36, 68.40,
27 68.44, and 68.46 RCW in accordance with RCW 43.24.086, including fees
28 for licenses, certificates, regulatory charges, permits, or
29 endorsements, and the department shall collect the fees.

30 **Sec. 215.** RCW 68.05.285 and 1953 c 290 s 29 are each amended to
31 read as follows:

32 (~~There shall be, in the office of the state treasurer, a fund to
33 be known and designated as the "cemetery fund." All regulatory fees or
34 other moneys to be paid under this chapter, unless provision be made
35 otherwise, shall be paid at least once a month to the state treasurer~~)

1 ~~to be credited to the cemetery fund. All moneys credited to the~~
2 ~~cemetery fund shall be used, when appropriated by the legislature, by~~
3 ~~the cemetery board to carry out the provisions of this chapter.))~~ The
4 funeral and cemetery account is created in the state treasury under RCW
5 18.39.800.

6 **Sec. 216.** RCW 68.24.090 and 1987 c 331 s 34 are each amended to
7 read as follows:

8 Property dedicated to cemetery purposes shall be held and used
9 exclusively for cemetery purposes, unless and until the dedication is
10 removed from all or any part of it by an order and decree of the
11 superior court of the county in which the property is situated, in a
12 proceeding brought by the cemetery authority for that purpose and upon
13 notice of hearing and proof satisfactory to the court:

14 (1) That no interments were made in or that all interments have
15 been removed from that portion of the property from which dedication is
16 sought to be removed.

17 (2) That the portion of the property from which dedication is
18 sought to be removed is not being used for interment of human remains.

19 (3) That notice of the proposed removal of dedication has been
20 given the funeral and cemetery board in writing for cemeteries
21 regulated by the board and to the office of archaeology and historic
22 preservation for abandoned and historic cemeteries and historic graves
23 at least sixty days before filing the proceedings in superior court.

24 **Sec. 217.** RCW 68.40.040 and 1987 c 331 s 37 are each amended to
25 read as follows:

26 A cemetery authority not exempt under this chapter shall file in
27 its principal office for review by plot owners the previous seven
28 fiscal years' endowment care reports as filed with the funeral and
29 cemetery board in accordance with RCW 68.44.150.

30 **Sec. 218.** RCW 68.44.115 and 1987 c 331 s 44 are each amended to
31 read as follows:

32 To be considered qualified as a trustee, each trustee of an
33 endowment care fund appointed in accordance with this chapter shall
34 file with the board a statement of acceptance of fiduciary
35 responsibility, on a form approved by the board, before assuming the
36 duties of trustee. The trustee shall remain in the trustee's fiduciary

1 capacity until such time as the trustee advises the funeral and
2 cemetery board in writing of the trustee's resignation of trusteeship.

3 **Sec. 219.** RCW 68.46.010 and 1979 c 21 s 22 are each amended to
4 read as follows:

5 Unless the context clearly indicates otherwise, the following terms
6 as used only in this chapter have the meaning given in this section:

7 (1) "Prearrangement contract" means a contract for purchase of
8 cemetery merchandise or services, unconstructed crypts or niches, or
9 undeveloped graves to be furnished at a future date for a specific
10 consideration which is paid in advance by one or more payments in one
11 sum or by installment payments.

12 (2) "Cemetery authority" shall have the same meaning as in RCW
13 68.04.190, and shall also include any individual, partnership, firm,
14 joint venture, corporation, company, association, or ((~~join~~ {~~joint~~}))
15 joint stock company, any of which sells cemetery services or
16 merchandise, unconstructed crypts or niches, or undeveloped graves
17 through a prearrangement contract, but shall not include insurance
18 companies licensed under chapter 48.05 RCW.

19 (3) "Cemetery merchandise or services" and "merchandise or
20 services" mean those services normally performed by cemetery
21 authorities, including the sale of monuments, markers, memorials,
22 nameplates, liners, vaults, boxes, urns, vases, interment services, or
23 any one or more of them.

24 (4) "Prearrangement trust fund" means all funds required to be
25 maintained in one or more funds for the benefit of beneficiaries by
26 either this chapter or by the terms of a prearrangement contract, as
27 herein defined.

28 (5) (~~("Depository" means a qualified public depository as defined~~
29 ~~by RCW 39.58.010, a credit union as governed by chapter 31.12 RCW, a~~
30 ~~mutual savings bank as governed by Title 32 RCW, a savings and loan~~
31 ~~association as governed by Title 33 RCW, and a federal credit union or~~
32 ~~a federal savings and loan association organized, operated, and~~
33 ~~governed by any act of congress, in which prearrangement funds are~~
34 ~~deposited by any cemetery authority.~~

35 (~~6~~)) "Board" means the funeral and cemetery board established
36 under ((~~chapter 68.05~~)) RCW 18.39.173 or its authorized representative.

1 (~~(7)~~) (6) "Undeveloped grave" means any grave in an area which a
2 cemetery authority has not landscaped and groomed to the extent
3 customary in the cemetery industry in that community.

4 **Sec. 220.** RCW 68.46.040 and 1987 c 331 s 50 are each amended to
5 read as follows:

6 All prearrangement trust funds shall be deposited in a
7 (~~qualified~~) public (~~depository~~) depository as defined by RCW
8 (~~68.46.010~~) 39.58.010 or invested in instruments issued or insured by
9 any agency of the federal government, if these securities are held in
10 public depository. Such savings accounts shall be designated as the
11 "prearrangement trust fund" by name and the particular cemetery
12 authority for the benefit of the beneficiaries named in any
13 prearrangement contract.

14 **Sec. 221.** RCW 68.46.090 and 1983 c 190 s 1 are each amended to
15 read as follows:

16 Any cemetery authority selling prearrangement merchandise or other
17 prearrangement services shall file in its office or offices and with
18 the (~~cemetery~~) board a written report upon forms prepared by the
19 (~~cemetery~~) board which shall state the amount of the principle of the
20 prearrangement trust fund or funds, the depository of such fund or
21 funds, and cash on hand which is or may be due to such fund as well as
22 such other information the board may deem appropriate. All information
23 appearing on such written reports shall be revised at least annually.
24 These reports shall be verified by the president, or the vice
25 president, and one other officer of the cemetery authority, the
26 accountant or auditor who prepared the report(~~(, and, if required by~~
27 ~~the board for good cause, a certified public accountant in accordance~~
28 ~~with generally accepted auditing standards)~~). The board may, in its
29 discretion, require verification of these reports by a certified public
30 accountant in accordance with generally accepted auditing standards
31 (~~(shall be required on reports from cemetery authorities which manage~~
32 ~~prearrangement trust funds totaling in excess of five hundred thousand~~
33 ~~dollars)~~).

34 **Sec. 222.** RCW 68.46.110 and 1973 1st ex.s. c 68 s 11 are each
35 amended to read as follows:

1 No cemetery authority shall sell, offer to sell or authorize the
2 sale of cemetery merchandise or services or accept funds in payment of
3 any prearrangement contract, either directly or indirectly, unless such
4 acts are performed in compliance with chapter 68, Laws of 1973 1st ex.
5 sess., and under the authority of a valid, subsisting and unsuspended
6 certificate of authority to operate a cemetery in this state by the
7 (~~Washington state cemetery~~) board.

8 **Sec. 223.** RCW 68.46.130 and 1979 c 21 s 43 are each amended to
9 read as follows:

10 The (~~cemetery~~) board may grant an exemption from any or all of
11 the requirements of this chapter relating to prearrangement contracts
12 to any cemetery authority which:

- 13 (1) Sells less than twenty prearrangement contracts per year; and
14 (2) Deposits one hundred percent of all funds received into a trust
15 fund under RCW 68.46.030(~~(, as now or hereafter amended)~~).

16 **Sec. 224.** RCW 68.50.230 and 1985 c 402 s 9 are each amended to
17 read as follows:

18 Whenever any dead human body shall have been in the lawful
19 possession of any person, firm, corporation or association for a period
20 of one year or more, or whenever the incinerated remains of any dead
21 human body have been in the lawful possession of any person, firm,
22 corporation or association for a period of two years or more, and the
23 relatives of, or persons interested in, the deceased person shall fail,
24 neglect or refuse for such periods of time, respectively, to direct the
25 disposition to be made of such body or remains, such body or remains
26 may be disposed of by the person, firm, corporation or association
27 having such lawful possession thereof, under and in accordance with
28 rules adopted by the funeral and cemetery board (~~(and the board of~~
29 ~~funeral directors and embalmers)~~), not inconsistent with any statute of
30 the state of Washington or rule (~~(or regulation prescribed)~~) adopted by
31 the state board of health.

32 **Sec. 225.** RCW 68.60.030 and 1995 c 399 s 168 are each amended to
33 read as follows:

34 (1)(a) The (~~archaeological and historical division of the~~
35 ~~department of community, trade, and economic development~~) office of
36 archaeology and historic preservation may grant by nontransferable

1 certificate authority to maintain and protect an abandoned cemetery
2 upon application made by a preservation organization which has been
3 incorporated for the purpose of restoring, maintaining, and protecting
4 an abandoned cemetery. Such authority shall be limited to the care,
5 maintenance, restoration, protection, and historical preservation of
6 the abandoned cemetery, and shall not include authority to make
7 burials(~~(, unless specifically granted by the cemetery board)~~).

8 (b) Those preservation and maintenance corporations that are
9 granted authority to maintain and protect an abandoned cemetery shall
10 be entitled to hold and possess burial records, maps, and other
11 historical documents as may exist. Maintenance and preservation
12 corporations that are granted authority to maintain and protect an
13 abandoned cemetery shall not be liable to those claiming burial rights,
14 ancestral ownership, or to any other person or organization alleging to
15 have control by any form of conveyance not previously recorded at the
16 county auditor's office within the county in which the abandoned
17 cemetery exists. Such organizations shall not be liable for any
18 reasonable alterations made during restoration work on memorials,
19 roadways, walkways, features, plantings, or any other detail of the
20 abandoned cemetery.

21 (c) Should the maintenance and preservation corporation be
22 dissolved, the (~~(archaeological and historical division of the~~
23 ~~department of community, trade, and economic development)~~) office of
24 archaeology and historic preservation shall revoke the certificate of
25 authority.

26 (d) Maintenance and preservation corporations that are granted
27 authority to maintain and protect an abandoned cemetery may establish
28 care funds (~~(pursuant to chapter 68.44 RCW, and shall report in~~
29 ~~accordance with chapter 68.44 RCW to the state cemetery board)~~).

30 (2) Except as provided in subsection (1) of this section, the
31 department of community, trade, and economic development may, in its
32 sole discretion, authorize any Washington nonprofit corporation that is
33 not expressly incorporated for the purpose of restoring, maintaining,
34 and protecting an abandoned cemetery, to restore, maintain, and protect
35 one or more abandoned cemeteries. The authorization may include the
36 right of access to any burial records, maps, and other historical
37 documents, but shall not include the right to be the permanent
38 custodian of original records, maps, or documents. This authorization
39 shall be granted by a nontransferable certificate of authority. Any

1 nonprofit corporation authorized and acting under this subsection is
2 immune from liability to the same extent as if it were a preservation
3 organization holding a certificate of authority under subsection (1) of
4 this section.

5 (3) The department of community, trade, and economic development
6 shall establish standards and guidelines for granting certificates of
7 authority under subsections (1) and (2) of this section to assure that
8 any restoration, maintenance, and protection activities authorized
9 under this subsection are conducted and supervised in an appropriate
10 manner.

11 **Sec. 226.** RCW 68.60.050 and 1989 c 44 s 5 are each amended to read
12 as follows:

13 (1) Any person who knowingly removes, mutilates, defaces, injures,
14 or destroys any historic grave shall be guilty of a class C felony
15 punishable under chapter 9A.20 RCW. Persons disturbing historic graves
16 through inadvertence, including disturbance through construction, shall
17 reinter the human remains under the supervision of the (~~cemetary~~
18 ~~board~~) office of archaeology and historic preservation. Expenses to
19 reinter such human remains are to be provided by the office of
20 archaeology and historic preservation.

21 (2) This section does not apply to actions taken in the performance
22 of official law enforcement duties.

23 (3) It shall be a complete defense in a prosecution under
24 subsection (1) of this section if the defendant can prove by a
25 preponderance of evidence that the alleged acts were accidental or
26 inadvertent and that reasonable efforts were made to preserve the
27 remains accidentally disturbed or discovered, and that the accidental
28 discovery or disturbance was properly reported.

29 **Sec. 227.** RCW 68.60.060 and 1990 c 92 s 5 are each amended to read
30 as follows:

31 Any person who violates any provision of this chapter is liable in
32 a civil action by and in the name of the (~~state cemetery board~~)
33 office of archaeology and historic preservation to pay all damages
34 occasioned by their unlawful acts. The sum recovered shall be applied
35 in payment for the repair and restoration of the property injured or
36 destroyed and to the care fund if one is established.

1 NEW SECTION. **Sec. 228.** The following acts or parts of acts are
2 each repealed:

3 (1) RCW 68.05.040 (Cemetery board created--Appointments--Terms) and
4 1987 c 331 s 5, 1977 ex.s. c 351 s 1, & 1953 c 290 s 31;

5 (2) RCW 68.05.050 (Qualifications of members) and 1979 c 21 s 5,
6 1977 ex.s. c 351 s 2, & 1953 c 290 s 32;

7 (3) RCW 68.05.060 (Compensation and travel expenses) and 1984 c 287
8 s 102, 1975-'76 2nd ex.s. c 34 s 156, & 1953 c 290 s 33;

9 (4) RCW 68.05.080 (Meetings) and 1987 c 331 s 6 & 1953 c 290 s 35;
10 and

11 (5) RCW 68.05.100 (Rules and regulations) and 1993 c 43 s 3, 1987
12 c 331 s 9, 1985 c 402 s 8, & 1953 c 290 s 36."

13 Renumber the remaining parts and sections consecutively, correct
14 any internal references accordingly, and correct the title.

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