NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 09-1202

BY REPRESENTATIVE(S) Todd, Benefield, Middleton, Ryden, Green, Labuda, McFadyen, Waller;
also SENATOR(S) Foster, Bacon, Williams.

CONCERNING THE REGULATION OF PERSONS WHO PROVIDE FOR THE FINAL DISPOSITION OF DEAD HUMAN BODIES IN THE NORMAL COURSE OF BUSINESS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. The introductory portion to 12-54-102, 12-54-102 (4), (8), and (12), the introductory portion to 12-54-102 (14), and 12-54-102 (14) (a) and (16), Colorado Revised Statutes, are amended, and the said 12-54-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

12-54-102. Definitions. As used in this ~~part 1~~ ARTICLE, unless the context otherwise requires:

(4) "Cremation" OR "CREMATE" means the reduction of a dead human body to essential elements through direct exposure to intense heat, the processing of the remains, and the placement of the processed remains

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Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

in a cremated remains container.

(4.5) "CREMATION CONTAINER" MEANS A CONTAINER IN WHICH THE DEAD HUMAN BODY IS TRANSPORTED TO THE CREMATORY AND INTENDED TO BE PLACED IN THE CREMATION CHAMBER.

(4.7) "CREMATIONIST" MEANS A PERSON WHO CREMATES OR PREPARES FOR CREMATION A DEAD HUMAN BODY.

(5.5) "DESIGNEE" MEANS AN INDIVIDUAL DESIGNATED BY A FUNERAL ESTABLISHMENT REGISTERED IN ACCORDANCE WITH SECTION 12-54-110 OR 12-54-303.

(5.7) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION OF REGISTRATIONS OR THE DIRECTOR'S DESIGNEE.

(8) "Embalmer" means any person who embalms, OR PREPARES FOR EMBALMING, a dead human body for compensation.

(12) "Funeral establishment" means: ~~either or both of the following:~~

(a) An establishment that holds, cares for, or prepares a dead human body prior to final disposition, including, but not limited to, a crematory or embalming room; except that this paragraph (a) does not apply to establishments in which individuals regularly die; ~~or~~

(b) An establishment that provides funeral goods ~~or~~ AND services to the public; OR

(c) FACILITIES USED TO HOLD, CARE FOR, OR PREPARE A DEAD HUMAN BODY PRIOR TO FINAL DISPOSITION; EXCEPT THAT THIS PARAGRAPH (c) DOES NOT APPLY TO FACILITIES IN WHICH INDIVIDUALS REGULARLY DIE.

(14) "Funeral services" means: ~~any one or more of the following:~~

(a) Preparation of dead human bodies for final disposition; EXCEPT THAT THIS PARAGRAPH (a) DOES NOT APPLY TO CREMATION;

(14.5) "IMPLANTED DEVICE" MEANS A MECHANICAL DEVICE THAT MAY EXPLODE OR CAUSE DAMAGE TO CREMATORY EQUIPMENT.

(16) ~~"Mortician"~~ "MORTUARY SCIENCE PRACTITIONER" means a person who, for compensation, DOES THE FOLLOWING OR OFFERS TO DO THE FOLLOWING:

(a) Embalms OR CREMATES dead human bodies;

(b) Arranges, directs, or supervises funerals, memorial services, or graveside services; or

(c) Prepares dead human bodies for final disposition.

SECTION 2. 12-54-104 (1) (c), (1) (e), (1) (g) (I), and (1) (h), the introductory portion to 12-54-104 (1) (i), and 12-54-104 (1) (i) (I), (1) (i) (VI), and (1) (i) (VII), Colorado Revised Statutes, are amended, and the said 12-54-104 (1) (i) is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBPARAGRAPHS, to read:

12-54-104. Unlawful acts. (1) It is unlawful:

(c) For any public officer or employee ~~the official of any public institution, or any hospital, nursing home, physician, surgeon, funeral director, embalmer, mortician,~~ or any other person having a professional relationship with the decedent to approve or cause the final disposition of a dead human body in violation of this article;

(e) For a funeral director, ~~mortician~~ MORTUARY SCIENCE PRACTITIONER, embalmer, ~~or~~ funeral establishment, OR FACILITY IN WHICH PEOPLE REGULARLY DIE or such person's OR FACILITY'S agent to engage in a business practice that interferes with the freedom of choice of the general public to choose a funeral director, ~~mortician~~ MORTUARY SCIENCE PRACTITIONER, embalmer, or funeral establishment;

(g) To transport or otherwise transfer by common carrier a dead human body unless:

(I) A funeral director, MORTUARY SCIENCE PRACTITIONER, or embalmer has embalmed or hermetically sealed the body for transportation and complies with applicable common carrier law; or

(h) ~~For a funeral director, mortician, or embalmer to advertise as~~

~~holding a degree or degree in mortuary science, certificate of registration, professional license, or professional certification issued by a state, political subdivision, or agency unless the person holds such degree, registration, license, or certification and it is current and valid at the time of advertisement. If a funeral director, mortician or embalmer advertises as holding a credential granted by a governmental entity, such person shall identify the jurisdiction that granted such credential in such advertisement.~~ TO ADVERTISE AS HOLDING A DEGREE, A CERTIFICATE OF REGISTRATION, A PROFESSIONAL LICENSE, OR A PROFESSIONAL CERTIFICATION ISSUED BY A STATE, POLITICAL SUBDIVISION, OR AGENCY UNLESS THE PERSON HOLDS SUCH DEGREE, REGISTRATION, LICENSE, OR CERTIFICATION AND IT IS CURRENT AND VALID AT THE TIME OF ADVERTISEMENT;

(i) For ~~an embalmer,~~ A funeral director, ~~or mortician~~ MORTUARY SCIENCE PRACTITIONER, OR EMBALMER to admit or permit any person to visit the embalming, CREMATION, or preparation room during the time ~~such~~ A body is being embalmed, CREMATED, or prepared for final disposition, unless such person:

(I) Is a funeral director, MORTUARY SCIENCE PRACTITIONER, CREMATIONIST, or embalmer;

(VI) Is a registered or licensed nurse ~~or~~ WITH A MEDICAL REASON TO BE PRESENT;

(VII) Is a licensed physician or surgeon WITH A MEDICAL REASON TO BE PRESENT;

(VIII) IS A TECHNICIAN REPRESENTING A PROCUREMENT ORGANIZATION AS DEFINED IN SECTION 12-34-102 FOR PURPOSES OF AN ANATOMICAL GIFT; OR

(IX) IS THE DIRECTOR OR THE DIRECTOR'S DESIGNEE.

SECTION 3. 12-54-104 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

12-54-104. Unlawful acts. (1) It is unlawful:

(n) TO ENGAGE IN WILLFULLY DISHONEST CONDUCT OR COMMIT NEGLIGENCE IN THE PRACTICE OF EMBALMING, FUNERAL DIRECTING, OR PROVIDING FOR FINAL DISPOSITION THAT DEFRAUDS OR CAUSES INJURY OR IS LIKELY TO DEFRAUD OR CAUSE INJURY;

(o) TO FAIL TO INCLUDE IN A CONTRACT FOR FUNERAL SERVICES THE FOLLOWING STATEMENT: "INQUIRIES REGARDING YOUR FUNERAL AGREEMENT MAY BE DIRECTED TO THE DEPARTMENT OF REGULATORY AGENCIES", ALONG WITH THE CURRENT ADDRESS OR TELEPHONE NUMBER OF THE DEPARTMENT OF REGULATORY AGENCIES.

SECTION 4. 12-54-107, Colorado Revised Statutes, is amended to read:

12-54-107. Violations and penalties. Any person who violates ~~the provisions of~~ this part 1 OR PART 3 OF THIS ARTICLE is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than twenty-four months or by both such fine and imprisonment.

SECTION 5. 12-54-108 (3), the introductory portion to 12-54-108 (4), and 12-54-108 (5), Colorado Revised Statutes, are amended to read:

12-54-108. Exceptions - safe harbor. (3) ~~Any~~ A person who ~~provides the sole service of selling or offering for sale~~ SELLS OR OFFERS TO SELL caskets, URNS, OR OTHER FUNERAL GOODS, BUT DOES NOT PROVIDE FUNERAL SERVICES, shall not be subject to ~~the provisions of~~ this article.

(4) If a funeral director, MORTUARY SCIENCE PRACTITIONER, or embalmer has acted in good faith, the funeral director, MORTUARY SCIENCE PRACTITIONER, or embalmer may rely on a signed statement from a person with the right of final disposition under section 15-19-106, C.R.S., that:

(5) (a) A funeral director or ~~embalmer~~ MORTUARY SCIENCE PRACTITIONER may dispose of cremated remains at the expense of the person with the right of final disposition ~~three hundred sixty-five~~ ONE HUNDRED EIGHTY days after cremation if the ~~funeral director has~~ PERSON WAS given clear prior notice of this ~~provision~~ PARAGRAPH (a) and ~~has given such person~~ a reasonable opportunity to collect the cremated remains, ~~if the funeral director or embalmer records~~ the exact location of the disposition

and the costs associated with the disposition ARE RECORDED, and the recovery of the cremated remains is possible. Recovery of costs shall be limited to a reasonable amount of the costs actually expended by the funeral director OR MORTUARY SCIENCE PRACTITIONER.

(b) If the person was cremated prior to July 1, 2003, and the funeral director OR MORTUARY SCIENCE PRACTITIONER reasonably attempts to notify the person with the right of final disposition of the provisions of this subsection (5), the ~~funeral director may dispose of~~ cremated remains MAY BE DISPOSED OF in accordance with this subsection (5) notwithstanding a failure to provide the notice of the provisions of this subsection (5) to the person with the right of final disposition prior to disposing of the remains.

SECTION 6. 15-19-103 (7) (b), Colorado Revised Statutes, is amended to read:

15-19-103. Definitions. As used in this article, unless the context otherwise requires:

(7) (b) "Third party" includes, but is not limited to, a funeral director, ~~mortician~~ MORTUARY SCIENCE PRACTITIONER, mortuary, crematorium, or cemetery.

SECTION 7. Article 19 of title 15, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION, CONTAINING A RELOCATED PROVISION, to read:

15-19-109. [Formerly 12-54-109] Effect of criminal charges. A person who has been arrested on suspicion of having committed, is charged with, or has been convicted of, any felony offense specified in part 1 of article 3 of title 18, C.R.S., involving the death of the deceased person, shall not direct the final disposition of the deceased person or arrange the ceremonies for the deceased person. If charges are not brought, charges are brought but dismissed, or the person charged is acquitted of the alleged crime before final disposition of the deceased person's body, this section shall not apply.

SECTION 8. Repeal of provision being relocated. 12-54-109, Colorado Revised Statutes, is repealed.

SECTION 9. Part 1 of article 54 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

12-54-110. Registration required. (1) UNLESS PRACTICING AT A REGISTERED FUNERAL ESTABLISHMENT PURSUANT TO THIS SECTION, A PERSON SHALL NOT PRACTICE AS, OR OFFER THE SERVICES OF, A MORTUARY SCIENCE PRACTITIONER, FUNERAL DIRECTOR, OR EMBALMER, NOR SHALL THE FUNERAL ESTABLISHMENT SELL OR OFFER TO SELL FUNERAL GOODS AND SERVICES TO THE PUBLIC.

(2) (a) EACH FUNERAL ESTABLISHMENT SHALL REGISTER WITH THE DIRECTOR USING FORMS AS DETERMINED BY THE DIRECTOR. THE REGISTRATION SHALL INCLUDE, WITHOUT LIMITATION, THE FOLLOWING:

(I) THE SPECIFIC LOCATION OF THE FUNERAL ESTABLISHMENT;

(II) THE FULL NAME AND ADDRESS OF THE DESIGNEE APPOINTED PURSUANT TO SUBSECTION (3) OF THIS SECTION;

(III) THE DATE THE FUNERAL ESTABLISHMENT BEGAN DOING BUSINESS; AND

(IV) A LIST OF EACH OF THE FOLLOWING SERVICES PROVIDED AT EACH FUNERAL ESTABLISHMENT LOCATION:

(A) REFRIGERATING OR HOLDING DEAD HUMAN BODIES;

(B) EMBALMING DEAD HUMAN BODIES;

(C) TRANSPORTING DEAD HUMAN BODIES TO OR FROM THE FUNERAL ESTABLISHMENT OR THE PLACE OF FINAL DISPOSITION; AND

(D) PROVIDING FUNERAL GOODS OR SERVICES TO THE PUBLIC.

(b) EACH FUNERAL ESTABLISHMENT REGISTRATION SHALL BE RENEWED, ACCORDING TO A SCHEDULE ESTABLISHED BY THE DIRECTOR, IN A FORM AS DETERMINED BY THE DIRECTOR.

(c) IF, AFTER INITIAL REGISTRATION, THE FUNERAL ESTABLISHMENT

PROVIDES A SERVICE LISTED IN SUBPARAGRAPH (IV) OF PARAGRAPH (a) OF THIS SUBSECTION (2) THAT WAS NOT INCLUDED IN THE INITIAL REGISTRATION, THE FUNERAL ESTABLISHMENT SHALL SUBMIT AN AMENDED REGISTRATION WITHIN THIRTY DAYS AFTER BEGINNING TO PROVIDE THE NEW SERVICE.

(d) IF, AFTER INITIAL REGISTRATION, THE FUNERAL ESTABLISHMENT APPOINTS A NEW DESIGNEE, THE FUNERAL ESTABLISHMENT SHALL SUBMIT AN AMENDED REGISTRATION WITHIN THIRTY DAYS AFTER APPOINTING THE DESIGNEE.

(e) THE DIRECTOR MAY ESTABLISH REGISTRATION FEES, RENEWAL FEES, AND DELINQUENCY FEES FOR REINSTATEMENT PURSUANT TO SECTION 24-34-105, C.R.S. IF A FUNERAL ESTABLISHMENT FAILS TO RENEW THE REGISTRATION IN ACCORDANCE WITH THE SCHEDULE ESTABLISHED BY THE DIRECTOR, THE REGISTRATION SHALL EXPIRE.

(3) EACH FUNERAL ESTABLISHMENT SHALL APPOINT AN INDIVIDUAL AS THE DESIGNEE OF THE FUNERAL ESTABLISHMENT. A DESIGNEE SHALL:

(a) BE AT LEAST EIGHTEEN YEARS OF AGE;

(b) HAVE AT LEAST TWO YEARS' EXPERIENCE WORKING FOR A FUNERAL ESTABLISHMENT;

(c) BE EMPLOYED BY THE REGISTERED FUNERAL ESTABLISHMENT THAT THE DESIGNEE REPRESENTS;

(d) HAVE THE AUTHORITY WITHIN THE FUNERAL ESTABLISHMENT'S ORGANIZATION TO REQUIRE THAT PERSONNEL COMPLY WITH THIS ARTICLE; AND

(e) NOT BE DESIGNATED FOR MORE THAN ONE FUNERAL ESTABLISHMENT UNLESS THE ADDITIONAL ESTABLISHMENT IS OPERATED UNDER COMMON OWNERSHIP AND MANAGEMENT AND NO FUNERAL ESTABLISHMENT IS MORE THAN SIXTY MILES FROM ANOTHER ESTABLISHMENT HELD UNDER THE SAME OWNERSHIP CONDITIONS.

(4) THE DESIGNEE SHALL REQUIRE EACH PERSON EMPLOYED AT THE FUNERAL ESTABLISHMENT TO DEMONSTRATE EVIDENCE OF COMPLIANCE

WITH SECTION 12-54-111. THE DESIGNEE SHALL RETAIN THE RECORDS OF SUCH EVIDENCE SO LONG AS THE PERSON IS EMPLOYED AT THE FUNERAL ESTABLISHMENT.

(5) THIS SECTION SHALL NOT REQUIRE THE REGISTRATION OF A NONPROFIT ORGANIZATION THAT ONLY PROVIDES EDUCATION OR SUPPORT TO AN INDIVIDUAL WHO INTENDS TO PROVIDE FOR FINAL DISPOSITION OF A DEAD HUMAN BODY.

12-54-111. Title protection. (1) A PERSON SHALL NOT ADVERTISE, REPRESENT, OR HOLD ONESELF OUT AS OR USE THE TITLE OF A MORTUARY SCIENCE PRACTITIONER UNLESS THE APPLICANT:

(a) HAS AT LEAST TWO THOUSAND HOURS PRACTICING OR INTERNING AS A MORTUARY SCIENCE PRACTITIONER, INCLUDING, WITHOUT LIMITATION, EXPERIENCE IN CREMATION AND EMBALMING;

(b) HAS GRADUATED WITH A DEGREE IN MORTUARY SCIENCE FROM A SCHOOL OF HIGHER EDUCATION ACCREDITED BY THE AMERICAN BOARD OF FUNERAL SERVICE EDUCATION OR ITS SUCCESSOR, IF THE SUCCESSOR IS APPROVED BY THE DIRECTOR; AND

(c) HAS TAKEN THE MORTUARY SCIENCE TEST, KNOWN AS THE NATIONAL BOARD EXAMINATION, ADMINISTERED BY THE INTERNATIONAL CONFERENCE OF FUNERAL SERVICE EXAMINING BOARDS OR ITS SUCCESSOR, IF THE SUCCESSOR IS APPROVED BY THE DIRECTOR, AND RECEIVED A PASSING SCORE.

(2) A PERSON SHALL NOT ADVERTISE, REPRESENT, OR HOLD ONESELF OUT AS OR USE THE TITLE OF A FUNERAL DIRECTOR UNLESS THE APPLICANT:

(a) HAS AT LEAST TWO THOUSAND HOURS PRACTICING OR INTERNING AS A FUNERAL DIRECTOR; AND

(b) HAS DIRECTED AT LEAST FIFTY FUNERALS OR GRAVESIDE SERVICES.

(3) A PERSON SHALL NOT ADVERTISE, REPRESENT, OR HOLD ONESELF OUT AS OR USE THE TITLE OF AN EMBALMER UNLESS THE APPLICANT:

(a) HAS AT LEAST FOUR THOUSAND HOURS PRACTICING OR INTERNING AS AN EMBALMER; AND

(b) HAS EMBALMED AT LEAST FIFTY DEAD HUMAN BODIES.

(4) FOR PURPOSES OF THIS SECTION, INTERN OR PRACTICE HOURS FROM COLORADO OR ANY OTHER STATE SHALL MEET THE STANDARDS SET BY THIS SECTION.

12-54-112. Standards of practice - embalming - transporting. (1) A FUNERAL ESTABLISHMENT THAT PERFORMS EMBALMING SHALL:

(a) MAINTAIN A SANITARY PREPARATION ROOM WITH SANITARY FLOORING, DRAINAGE, AND VENTILATION;

(b) EMPLOY UNIVERSAL BIOLOGICAL HAZARD PRECAUTIONS;

(c) EMPLOY REASONABLE CARE TO MINIMIZE THE RISK OF TRANSMITTING COMMUNICABLE DISEASES FROM DEAD HUMAN BODIES;

(d) BE EQUIPPED WITH INSTRUMENTS AND SUPPLIES NECESSARY TO PROTECT THE HEALTH AND SAFETY OF THE PUBLIC AND EMPLOYEES OF THE FUNERAL ESTABLISHMENT; AND

(e) TRANSPORT DEAD HUMAN BODIES IN A SAFE AND SANITARY MANNER.

(2) A FUNERAL ESTABLISHMENT THAT TRANSPORTS DEAD HUMAN BODIES SHALL:

(a) USE A MOTOR VEHICLE THAT IS APPROPRIATE FOR THE TRANSPORTATION OF A DEAD HUMAN BODY; AND

(b) TRANSPORT DEAD HUMAN BODIES IN A SAFE AND SANITARY MANNER.

(3) A FUNERAL ESTABLISHMENT SHALL REMOVE ANY IMPLANTED DEVICE IN A DEAD HUMAN BODY BEFORE TRANSPORTING THE BODY TO A CREMATORY.

SECTION 10. Article 54 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARTS to read:

PART 3
CREMATION

12-54-301. Unlawful acts. (1) IT IS UNLAWFUL FOR A CREMATIONIST:

(a) TO DISCRIMINATE BECAUSE OF RACE, CREED, COLOR, RELIGION, SEX, MARITAL STATUS, SEXUAL ORIENTATION, OR NATIONAL ORIGIN IN THE PROVISION OF FUNERAL SERVICES;

(b) TO APPROVE OR CAUSE THE FINAL DISPOSITION OF A DEAD HUMAN BODY IN VIOLATION OF THIS ARTICLE;

(c) TO ENGAGE IN A BUSINESS PRACTICE THAT INTERFERES WITH THE FREEDOM OF CHOICE OF THE GENERAL PUBLIC TO CHOOSE A FUNERAL DIRECTOR, MORTUARY SCIENCE PRACTITIONER, CREMATIONIST, EMBALMER, OR FUNERAL ESTABLISHMENT;

(d) TO ADVERTISE AS HOLDING A DEGREE, A CERTIFICATE OF REGISTRATION, A PROFESSIONAL LICENSE, OR A PROFESSIONAL CERTIFICATION ISSUED BY A STATE, POLITICAL SUBDIVISION, OR AGENCY UNLESS THE PERSON HOLDS SUCH DEGREE, REGISTRATION, LICENSE, OR CERTIFICATION AND IT IS CURRENT AND VALID AT THE TIME OF ADVERTISEMENT;

(e) TO ADMIT OR PERMIT ANY PERSON TO VISIT THE CREMATORY OR PREPARATION ROOM DURING THE TIME A BODY IS BEING CREMATED OR PREPARED FOR FINAL DISPOSITION UNLESS SUCH PERSON:

(I) IS A FUNERAL DIRECTOR, MORTUARY SCIENCE PRACTITIONER, OR CREMATIONIST;

(II) IS AN AUTHORIZED EMPLOYEE OF A CREMATORY;

(III) HAS THE WRITTEN CONSENT OF THE NEXT OF KIN OF THE DECEASED PERSON OR OF A PERSON HAVING LEGAL AUTHORITY TO GIVE

CONSENT IN THE ABSENCE OF ANY NEXT OF KIN;

(IV) ENTERS BY ORDER OF A COURT OF COMPETENT JURISDICTION OR A PEACE OFFICER LEVEL I, Ia, II, III, OR IIIa;

(V) IS A STUDENT OR INTERN ENROLLED IN A MORTUARY SCIENCE PROGRAM;

(VI) IS A REGISTERED OR LICENSED NURSE WITH A MEDICAL REASON TO BE PRESENT;

(VII) IS A LICENSED PHYSICIAN OR SURGEON WITH A MEDICAL REASON TO BE PRESENT;

(VIII) IS A TECHNICIAN REPRESENTING A PROCUREMENT ORGANIZATION AS DEFINED IN SECTION 12-34-102 FOR PURPOSES OF AN ANATOMICAL GIFT; OR

(IX) IS THE DIRECTOR OR THE DIRECTOR'S DESIGNEE;

(f) TO REFUSE TO PROPERLY AND PROMPTLY RELEASE A DEAD HUMAN BODY TO THE CUSTODY OF THE PERSON WHO HAS THE LEGAL RIGHT TO EFFECT SUCH RELEASE, WHETHER OR NOT ANY COSTS HAVE BEEN PAID, UNLESS THERE IS A GOOD FAITH DISPUTE OVER WHO CONTROLS THE RIGHT OF FINAL DISPOSITION;

(g) TO CREMATE A DEAD HUMAN BODY WITHOUT OBTAINING PERMISSION FROM THE PERSON WITH THE RIGHT OF FINAL DISPOSITION;

(h) TO PROHIBIT, HINDER, OR RESTRICT, OR ATTEMPT TO PROHIBIT, HINDER, OR RESTRICT, THE FOLLOWING:

(I) THE OFFERING OR ADVERTISING OF IMMEDIATE CREMATION, ADVANCE FUNERAL ARRANGEMENTS, LOW-COST FUNERALS, OR LOW-COST CREMATIONS;

(II) ARRANGEMENTS BETWEEN MEMORIAL SOCIETIES AND FUNERAL INDUSTRY MEMBERS; OR

(III) A FUNERAL SERVICE INDUSTRY MEMBER FROM DISCLOSING

ACCURATE INFORMATION CONCERNING FUNERAL MERCHANDISE AND SERVICES;

(i) TO CREMATE A DEAD HUMAN BODY IN A FACILITY UNLESS THE FACILITY IS REGISTERED PURSUANT TO SECTION 12-54-303;

(j) TO REFUSE TO ACCEPT A DEAD HUMAN BODY THAT IS NOT IN A CASKET OR TO REQUIRE A DEAD HUMAN BODY TO BE PLACED IN A CASKET AT ANY TIME;

(k) TO PERFORM SERVICES BEYOND A CREMATIONIST'S COMPETENCY, TRAINING, OR EDUCATION;

(l) TO ENGAGE IN WILLFULLY DISHONEST CONDUCT OR COMMIT NEGLIGENCE IN THE PRACTICE OF CREMATION OR PROVIDING FOR FINAL DISPOSITION THAT DEFRAUDS OR CAUSES INJURY OR IS LIKELY TO DEFRAUD OR CAUSE INJURY.

(2) FOR PURPOSES OF THIS SECTION ONLY, "NEXT OF KIN" SHALL NOT INCLUDE ANY PERSON WHO IS ARRESTED ON SUSPICION OF HAVING COMMITTED, IS CHARGED WITH, OR HAS BEEN CONVICTED OF, ANY FELONY OFFENSE SPECIFIED IN PART 1 OF ARTICLE 3 OF TITLE 18, C.R.S., INVOLVING THE DEATH OF THE DECEASED PERSON. THIS SUBSECTION (2) SHALL NOT APPLY IF CHARGES ARE NOT BROUGHT, CHARGES ARE BROUGHT BUT DISMISSED, OR THE PERSON CHARGED IS ACQUITTED OF THE ALLEGED CRIME BEFORE FINAL DISPOSITION OF THE DECEASED PERSON'S BODY.

12-54-302. Exceptions - safe harbor. (1) IF A CREMATIONIST HAS ACTED IN GOOD FAITH, THE CREMATIONIST MAY RELY ON A SIGNED STATEMENT FROM A PERSON WITH THE RIGHT OF FINAL DISPOSITION UNDER SECTION 15-19-106, C.R.S., THAT:

(a) THE PERSON KNOWS OF NO DOCUMENT EXPRESSING THE DECEASED PERSON'S WISHES FOR FINAL DISPOSITION THAT QUALIFIES TO DIRECT THE FINAL DISPOSITION UNDER SECTION 15-19-104, C.R.S.;

(b) THE PERSON HAS MADE A REASONABLE EFFORT UNDER SECTION 15-19-106, C.R.S., TO CONTACT EACH PERSON WITH THE RIGHT OF FINAL DISPOSITION AND TO LEARN HIS OR HER WISHES; AND

(c) THE PERSON KNOWS OF NO OBJECTIONS TO THE FINAL DISPOSITION.

(2) (a) A CREMATIONIST MAY DISPOSE OF CREMAINS AT THE EXPENSE OF THE PERSON WITH THE RIGHT OF FINAL DISPOSITION ONE HUNDRED EIGHTY DAYS AFTER CREMATION IF THE PERSON WAS GIVEN CLEAR PRIOR NOTICE OF THIS PARAGRAPH (a) AND A REASONABLE OPPORTUNITY TO COLLECT THE CREMAINS, THE EXACT LOCATION OF THE DISPOSITION AND THE COSTS ASSOCIATED WITH THE DISPOSITION ARE RECORDED, AND THE RECOVERY OF THE CREMAINS IS POSSIBLE. RECOVERY OF COSTS SHALL BE LIMITED TO A REASONABLE AMOUNT OF THE COSTS ACTUALLY EXPENDED BY THE CREMATIONIST.

(b) IF THE DECEASED WAS CREMATED PRIOR TO JULY 1, 2003, AND THE CREMATIONIST REASONABLY ATTEMPTS TO NOTIFY THE PERSON WITH THE RIGHT OF FINAL DISPOSITION OF THE PROVISIONS OF THIS SUBSECTION (2), THE CREMAINS MAY BE DISPOSED OF IN ACCORDANCE WITH THIS SUBSECTION (2), NOTWITHSTANDING A FAILURE TO PROVIDE THE NOTICE OF THE PROVISIONS OF THIS SUBSECTION (2) TO THE PERSON WITH THE RIGHT OF FINAL DISPOSITION PRIOR TO DISPOSING OF THE REMAINS.

(3) (a) THIS PART 3 SHALL NOT APPLY TO, NOR INTERFERE WITH, ANY CUSTOM OR RITE OF A RELIGIOUS SECT IN THE FINAL DISPOSITION OF ITS DEAD, AND THE MEMBERS AND FOLLOWERS OF SUCH RELIGIOUS SECT MAY CONTINUE TO CARE FOR, PREPARE, AND CREMATE THE BODIES OF DECEASED MEMBERS OF THE RELIGIOUS SECT IF THE DEAD HUMAN BODY IS REFRIGERATED, FROZEN, OR CREMATED WITHIN SEVEN DAYS AFTER DEATH.

(b) IF A DEAD HUMAN BODY IS REFRIGERATED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3), THE BODY SHALL BE CREMATED WITHIN THIRTY DAYS AFTER DEATH UNLESS THE CORONER AUTHORIZES OTHERWISE IN WRITING. THE CORONER SHALL NOT PERMIT AN EXCEPTION TO THIS PARAGRAPH (b) UNLESS THE APPLICANT CAN DEMONSTRATE A LEGITIMATE DELAY CAUSED BY UNFORESEEN, UNCONTROLLABLE CIRCUMSTANCES OR BY A CRIMINAL INVESTIGATION.

12-54-303. Registration required. (1) UNLESS PRACTICING AT A REGISTERED CREMATORY PURSUANT TO THIS SECTION, A PERSON SHALL NOT PRACTICE AS, OR OFFER THE SERVICES OF, A CREMATIONIST, NOR SHALL THE CREMATORY SELL OR OFFER TO SELL FUNERAL GOODS AND SERVICES TO THE

PUBLIC.

(2) (a) EACH CREMATORY SHALL REGISTER WITH THE DIRECTOR USING FORMS AS DETERMINED BY THE DIRECTOR. THE REGISTRATION SHALL INCLUDE, WITHOUT LIMITATION, THE FOLLOWING:

(I) THE SPECIFIC LOCATION OF THE CREMATORY;

(II) THE FULL NAME AND ADDRESS OF THE DESIGNEE APPOINTED PURSUANT TO SUBSECTION (3) OF THIS SECTION;

(III) THE DATE THE CREMATORY BEGAN DOING BUSINESS; AND

(IV) A LIST OF EACH OF THE FOLLOWING SERVICES PROVIDED AT EACH CREMATORY LOCATION:

(A) REFRIGERATING OR HOLDING DEAD HUMAN BODIES;

(B) TRANSPORTING DEAD HUMAN BODIES TO OR FROM THE CREMATORY OR THE PLACE OF FINAL DISPOSITION;

(C) PROVIDING FUNERAL GOODS OR SERVICES TO THE PUBLIC; AND

(D) CREMATING DEAD HUMAN BODIES.

(b) EACH CREMATORY REGISTRATION SHALL BE RENEWED, ACCORDING TO A SCHEDULE ESTABLISHED BY THE DIRECTOR, IN A FORM AS DETERMINED BY THE DIRECTOR.

(c) IF, AFTER INITIAL REGISTRATION, THE CREMATORY PROVIDES A SERVICE LISTED IN SUBPARAGRAPH (IV) OF PARAGRAPH (a) OF THIS SUBSECTION (2) THAT WAS NOT INCLUDED IN THE INITIAL REGISTRATION, THE CREMATORY SHALL SUBMIT AN AMENDED REGISTRATION WITHIN THIRTY DAYS AFTER BEGINNING TO PROVIDE THE NEW SERVICE.

(d) IF, AFTER INITIAL REGISTRATION, THE CREMATORY APPOINTS A NEW DESIGNEE, THE CREMATORY SHALL SUBMIT AN AMENDED REGISTRATION WITHIN THIRTY DAYS AFTER APPOINTING THE DESIGNEE.

(e) THE DIRECTOR MAY ESTABLISH REGISTRATION FEES, RENEWAL

FEES, AND DELINQUENCY FEES FOR REINSTATEMENT PURSUANT TO SECTION 24-34-105, C.R.S. IF A CREMATORY FAILS TO RENEW THE REGISTRATION IN ACCORDANCE WITH THE SCHEDULE ESTABLISHED BY THE DIRECTOR, THE REGISTRATION SHALL EXPIRE.

(3) EACH CREMATORY SHALL APPOINT AN INDIVIDUAL AS THE DESIGNEE OF THE CREMATORY. A DESIGNEE SHALL:

(a) BE AT LEAST EIGHTEEN YEARS OF AGE;

(b) HAVE AT LEAST TWO YEARS' EXPERIENCE WORKING FOR A CREMATORY;

(c) BE EMPLOYED BY THE REGISTERED CREMATORY THAT THE DESIGNEE REPRESENTS;

(d) HAVE THE AUTHORITY WITHIN THE CREMATORY'S ORGANIZATION TO REQUIRE THAT PERSONNEL COMPLY WITH THIS ARTICLE; AND

(e) NOT BE DESIGNATED FOR MORE THAN ONE CREMATORY UNLESS THE ADDITIONAL ESTABLISHMENT IS OPERATED UNDER COMMON OWNERSHIP AND MANAGEMENT AND NO CREMATORY IS MORE THAN SIXTY MILES FROM ANOTHER ESTABLISHMENT HELD UNDER THE SAME OWNERSHIP CONDITIONS.

(4) THE DESIGNEE SHALL REQUIRE EACH PERSON EMPLOYED AT THE CREMATORY TO DEMONSTRATE EVIDENCE OF COMPLIANCE WITH SECTION 12-54-304. THE DESIGNEE SHALL RETAIN THE RECORDS OF SUCH EVIDENCE SO LONG AS THE PERSON IS EMPLOYED AT THE CREMATORY.

(5) THIS SECTION SHALL NOT REQUIRE THE REGISTRATION OF A NONPROFIT ORGANIZATION THAT ONLY PROVIDES EDUCATION OR SUPPORT TO AN INDIVIDUAL WHO INTENDS TO PROVIDE FOR FINAL DISPOSITION OF A DEAD HUMAN BODY.

12-54-304. Title protection. A PERSON SHALL NOT ADVERTISE, REPRESENT, OR HOLD ONESELF OUT AS OR USE THE TITLE OF A CREMATIONIST UNLESS THE APPLICANT HAS AT LEAST FIVE HUNDRED HOURS PRACTICING OR INTERNING AS A CREMATIONIST AND HAS CREMATED AT LEAST FIFTY DEAD HUMAN BODIES.

12-54-305. Records and receipts. (1) THE CREMATORY SHALL FURNISH TO A PERSON WHO DELIVERS HUMAN REMAINS TO THE CREMATORY A RECEIPT, WHICH SHALL BE SIGNED BY BOTH THE CREMATORY'S REPRESENTATIVE AND THE PERSON WHO DELIVERS THE HUMAN REMAINS. THE CREMATORY SHALL RETAIN A COPY OF THE RECEIPT IN ITS RECORDS PURSUANT TO SUBSECTION (3) OF THIS SECTION. THE RECEIPT SHALL INCLUDE THE FOLLOWING:

(a) THE DATE AND TIME OF THE DELIVERY;

(b) THE TYPE OF CASKET OR ALTERNATIVE CONTAINER THAT WAS DELIVERED;

(c) THE NAME OF THE PERSON WHO DELIVERED THE HUMAN REMAINS;

(d) THE NAME OF ANY BUSINESS WITH WHICH THE PERSON DELIVERING THE HUMAN REMAINS IS AFFILIATED;

(e) THE NAME OF THE PERSON WHO RECEIVED THE HUMAN REMAINS ON BEHALF OF THE CREMATORY; AND

(f) THE NAME OF THE DECEDENT.

(2) UPON RELEASE OF CREMAINS, THE CREMATORY SHALL FURNISH TO THE PERSON WHO RECEIVES THE CREMAINS A RECEIPT, SIGNED BY BOTH THE CREMATORY'S REPRESENTATIVE AND THE PERSON WHO RECEIVES THE CREMAINS. THE CREMATORY SHALL RETAIN A COPY OF THE RECEIPT IN ITS RECORDS PURSUANT TO SUBSECTION (1) OF THIS SECTION. THE RECEIPT SHALL INCLUDE THE FOLLOWING:

(a) THE DATE AND TIME OF THE RELEASE;

(b) THE NAME OF THE PERSON TO WHOM THE CREMAINS WERE RELEASED;

(c) THE NAME OF THE PERSON WHO RELEASED THE CREMAINS ON BEHALF OF THE CREMATORY; AND

(d) THE NAME OF THE DECEDENT.

(3) A CREMATORY SHALL MAINTAIN, FOR AT LEAST FIVE YEARS AND AVAILABLE AT THE REGISTERED LOCATION, A PERMANENT RECORD OF EACH CREMATION OCCURRING AT THE FACILITY AND COPIES OF THE RECEIPTS REQUIRED BY THIS SECTION.

12-54-306. Limited liability. A CREMATORY SHALL NOT BE LIABLE FOR ANY VALUABLES DELIVERED TO THE CREMATORY IF THE CREMATORY EXERCISED REASONABLE CARE IN HANDLING AND PROTECTING THE VALUABLES.

12-54-307. Standards of practice - cremating. (1) A CREMATORY SHALL:

(a) MAINTAIN A RETORT OR CREMATORY CHAMBER THAT IS OPERATED AT ALL TIMES IN A SAFE AND SANITARY MANNER;

(b) EMPLOY REASONABLE CARE TO MINIMIZE THE RISK OF TRANSMITTING COMMUNICABLE DISEASES FROM DEAD HUMAN BODIES;

(c) BE EQUIPPED WITH INSTRUMENTS AND SUPPLIES NECESSARY TO PROTECT THE HEALTH AND SAFETY OF THE PUBLIC AND EMPLOYEES OF THE CREMATORY; AND

(d) TRANSPORT DEAD HUMAN BODIES IN A SAFE AND SANITARY MANNER.

(2) (a) A CREMATORY SHALL NOT CREMATE A DEAD HUMAN BODY UNLESS THE CREMATORY HAS OBTAINED A STATEMENT CONTAINING THE FOLLOWING FROM A FUNERAL ESTABLISHMENT, FUNERAL DIRECTOR, MORTUARY SCIENCE PRACTITIONER, OR THE PERSON WITH THE RIGHT OF FINAL DISPOSITION:

(I) THE IDENTITY OF THE DECEDENT;

(II) THE DATE OF DEATH;

(III) AUTHORIZATION TO CREMATE THE DEAD HUMAN BODY;

(IV) THE NAME OF THE PERSON AUTHORIZING CREMATION AND AN AFFIDAVIT OR OTHER DOCUMENT IN COMPLIANCE WITH ARTICLE 19 OF TITLE

15, C.R.S., THAT THE AUTHORIZATION COMPLIES WITH ARTICLE 19 OF TITLE 15, C.R.S.;

(V) A STATEMENT THAT THE DEAD HUMAN BODY DOES NOT CONTAIN AN IMPLANTED DEVICE;

(VI) THE NAME OF THE PERSON AUTHORIZED TO RECEIVE THE CREMAINS;

(VII) A LIST OF ITEMS DELIVERED TO THE CREMATORY ALONG WITH THE DEAD HUMAN BODY;

(VIII) A STATEMENT AS TO WHETHER THE NEXT OF KIN HAS MADE ARRANGEMENTS FOR A VIEWING OR SERVICE BEFORE CREMATION AND THE DATE AND TIME OF ANY VIEWING OR SERVICE;

(IX) A COPY OF THE DEATH CERTIFICATE; AND

(X) A SIGNATURE OF A REPRESENTATIVE OF ANY FUNERAL ESTABLISHMENT OR THE NEXT OF KIN MAKING ARRANGEMENTS FOR CREMATION THAT THE REPRESENTATIVE HAS NO ACTUAL KNOWLEDGE THAT CONTRADICTS ANY INFORMATION REQUIRED BY THIS PARAGRAPH (a).

(b) A PERSON WHO SIGNS THE STATEMENT REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL WARRANT THE TRUTHFULNESS OF THE FACTS CONTAINED THEREIN. A PERSON WHO SIGNS THE STATEMENT WITH ACTUAL KNOWLEDGE TO THE CONTRARY SHALL BE CIVILLY LIABLE.

(3) (a) THE DEAD HUMAN BODY SHALL BE HELD IN A CREMATION CONTAINER AND SHALL NOT BE REMOVED.

(b) THE DEAD HUMAN BODY SHALL BE CREMATED IN A CREMATION CONTAINER.

(c) A CREMATION CONTAINER SHALL:

(I) BE COMPOSED OF COMBUSTIBLE MATERIALS SUITABLE FOR CREMATION;

(II) BE ABLE TO BE CLOSED IN ORDER TO PROVIDE A COMPLETE

COVERING FOR THE DEAD HUMAN BODY;

(III) BE RESISTANT TO LEAKING OR SPILLING;

(IV) BE RIGID ENOUGH TO HANDLE WITH EASE; AND

(V) PROVIDE REASONABLE PROTECTION FOR THE HEALTH AND SAFETY OF CREMATORY EMPLOYEES.

(4) A CREMATORY SHALL NOT CREMATE MORE THAN ONE DEAD HUMAN BODY WITHIN THE SAME CREMATION CHAMBER OR OTHERWISE COMMINGLE THE CREMAINS OF MULTIPLE DEAD HUMAN BODIES UNLESS THE NEXT OF KIN HAS SIGNED A WRITTEN AUTHORIZATION. NO CREMATORY SHALL BE HELD CIVILLY LIABLE FOR COMMINGLING THE CREMAINS OF DEAD HUMAN BODIES IF THE NEXT OF KIN HAS SIGNED SUCH WRITTEN AUTHORIZATION.

(5) (a) A CREMATORY SHALL USE A TAG TO IDENTIFY A DEAD HUMAN BODY AND CREMAINS. THE TAG SHALL BE VERIFIED, REMOVED, AND PLACED NEAR THE CREMATION CHAMBER CONTROL PANEL PRIOR TO CREMATION. THE TAG SHALL REMAIN NEXT TO THE CREMATION CHAMBER UNTIL THE CREMATION IS COMPLETE.

(b) AFTER CREMATION IS COMPLETE, ALL OF THE CREMAINS AND REASONABLE RECOVERABLE RESIDUE SHALL BE REMOVED FROM THE CREMATION CHAMBER AND PROCESSED AS NECESSARY. ANYTHING OTHER THAN THE CREMAINS SHALL BE DISPOSED OF UNLESS THE NEXT OF KIN AUTHORIZES OTHERWISE.

(c) THE PROCESSED CREMAINS SHALL BE PLACED IN A TEMPORARY CONTAINER OR URN. ANY CREMAINS THAT DO NOT FIT WITHIN SUCH ENCLOSURE SHALL BE PLACED IN A SEPARATE TEMPORARY CONTAINER OR URN. EACH CONTAINER SHALL BE MARKED WITH THE DECEDENT'S IDENTITY AND THE NAME OF THE CREMATORY. IF A TEMPORARY CONTAINER IS USED, THE CREMATORY SHALL DISCLOSE THAT THE TEMPORARY CONTAINER SHOULD NOT BE USED FOR PERMANENT STORAGE.

(d) IF CREMATED REMAINS ARE SHIPPED, THE CREMATORY SHALL USE A METHOD THAT EMPLOYS AN INTERNAL TRACKING SYSTEM AND OBTAINS A SIGNED RECEIPT FROM THE PERSON ACCEPTING DELIVERY.

(6) CREMAINS SHALL NOT BE COMMINGLED WITH OTHER CREMAINS IN FINAL DISPOSITION OR SCATTERING WITHOUT WRITTEN AUTHORIZATION FROM THE NEXT OF KIN UNLESS THE DISPOSITION OR SCATTERING OCCURS WITHIN A DEDICATED CEMETERY OR CONSECRATED GROUNDS USED EXCLUSIVELY FOR SUCH PURPOSES.

(7) (a) A CREMATORY SHALL NOT CREMATE A DEAD HUMAN BODY CONTAINING AN IMPLANTED DEVICE. IF THE FUNERAL ESTABLISHMENT THAT HAD CONTROL OF THE DEAD HUMAN BODY FAILED TO ENSURE THAT A DEVICE WAS REMOVED, THE FUNERAL ESTABLISHMENT SHALL BE RESPONSIBLE FOR REMOVING THE DEVICE.

(b) IF THE PERSON AUTHORIZING CREMATION FAILS TO INFORM THE CREMATORY OF THE PRESENCE OF AN IMPLANTED DEVICE, THE PERSON SHALL BE SOLELY LIABLE FOR ANY RESULTING DAMAGE TO THE CREMATORY.

PART 4
ADMINISTRATION

12-54-401. Powers and duties of the director - rules. (1) THE DIRECTOR MAY DENY, SUSPEND, REFUSE TO RENEW, ISSUE A LETTER OF ADMONITION OR CONFIDENTIAL LETTER OF CONCERN TO, REVOKE, PLACE ON PROBATION, OR LIMIT THE SCOPE OF PRACTICE OF THE REGISTRATION OF A FUNERAL ESTABLISHMENT OR CREMATORY UNDER THIS ARTICLE THAT HAS:

(a) FILED AN APPLICATION WITH THE DIRECTOR CONTAINING MATERIAL MISSTATEMENTS OF FACT OR HAS OMITTED ANY DISCLOSURE REQUIRED BY THIS ARTICLE;

(b) HAD A REGISTRATION ISSUED BY COLORADO, OR AN EQUIVALENT LICENSE, REGISTRATION, OR CERTIFICATION ISSUED BY ANOTHER STATE, TO PRACTICE MORTUARY SCIENCE OR TO EMBALM OR CREMATE A DEAD HUMAN BODY REVOKED; OR

(c) VIOLATED THIS ARTICLE OR ANY RULE OF THE DIRECTOR ADOPTED UNDER THIS ARTICLE.

(2) (a) THE DIRECTOR MAY DENY OR REVOKE A REGISTRATION IF THE FUNERAL ESTABLISHMENT, CREMATORY, OR THE DESIGNEE THEREOF HAS BEEN CONVICTED OF A FELONY RELATED TO ANOTHER ACTIVITY REGULATED

UNDER THIS ARTICLE OR A FELONY OF MORAL TURPITUDE. THE DIRECTOR SHALL PROMPTLY NOTIFY THE FUNERAL ESTABLISHMENT OR CREMATORY OF SUCH REVOCATION.

(b) A CREMATORY OR FUNERAL ESTABLISHMENT WHOSE REGISTRATION HAS BEEN REVOKED SHALL NOT BE ELIGIBLE FOR A REGISTRATION FOR TWO YEARS AFTER THE EFFECTIVE DATE OF THE REVOCATION.

(3) THE DIRECTOR MAY INVESTIGATE THE ACTIVITIES OF A FUNERAL ESTABLISHMENT OR CREMATORY UPON HIS OR HER OWN INITIATIVE OR UPON RECEIPT OF A COMPLAINT OR A SUSPECTED OR ALLEGED VIOLATION OF THIS ARTICLE.

(4) THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE APPOINTED PURSUANT TO PART 10 OF ARTICLE 30 OF TITLE 24, C.R.S., SHALL CONDUCT DISCIPLINARY HEARINGS CONCERNING A REGISTRATION ISSUED UNDER THIS ARTICLE. SUCH HEARINGS SHALL CONFORM TO ARTICLE 4 OF TITLE 24, C.R.S.

(5) (a) THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE MAY ADMINISTER OATHS, TAKE AFFIRMATIONS OF WITNESSES, AND ISSUE SUBPOENAS TO COMPEL THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF ALL RELEVANT PAPERS, BOOKS, RECORDS, DOCUMENTARY EVIDENCE, AND MATERIALS IN ANY HEARING OR INVESTIGATION CONDUCTED BY THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE.

(b) UPON FAILURE OF A WITNESS TO COMPLY WITH A SUBPOENA OR SERVICE OF PROCESS, THE DISTRICT COURT OF THE COUNTY IN WHICH THE SUBPOENAED WITNESS RESIDES OR CONDUCTS BUSINESS MAY ISSUE AN ORDER REQUIRING THE WITNESS TO APPEAR BEFORE THE DIRECTOR OR ADMINISTRATIVE LAW JUDGE AND PRODUCE THE RELEVANT PAPERS, BOOKS, RECORDS, DOCUMENTARY EVIDENCE, TESTIMONY, OR MATERIALS IN QUESTION. FAILURE TO OBEY THE ORDER OF THE COURT MAY BE PUNISHED AS A CONTEMPT OF COURT. THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE MAY APPLY FOR SUCH ORDER.

(6) THE DIRECTOR SHALL KEEP RECORDS OF REGISTRATIONS AND DISCIPLINARY PROCEEDINGS. THE RECORDS KEPT BY THE DIRECTOR SHALL BE OPEN TO PUBLIC INSPECTION IN A REASONABLE TIME AND MANNER

DETERMINED BY THE DIRECTOR.

(7) WHEN THE DIRECTOR OR ADMINISTRATIVE LAW JUDGE DEEMS IT APPROPRIATE AND USEFUL, THE DIRECTOR OR ADMINISTRATIVE LAW JUDGE MAY CONSULT WITH OR OBTAIN A WRITTEN OPINION FROM AN APPROPRIATE PROFESSIONAL ORGANIZATION OR ASSOCIATION OF BUSINESSES WHO OFFER SERVICES REQUIRING REGISTRATION UNDER THIS ARTICLE FOR THE PURPOSE OF INVESTIGATING POSSIBLE VIOLATIONS OR WEIGHING THE APPROPRIATE STANDARD OF CARE TO BE APPLIED TO SPECIFIC EVENTS OR THE FACTS IN A HEARING BEING HELD UNDER THIS ARTICLE.

(8) (a) THE DIRECTOR MAY PROMULGATE REASONABLE RULES NECESSARY TO IMPLEMENT THIS SECTION, SECTIONS 12-54-110, 12-54-111, 12-54-303, AND 12-54-304, AND THIS PART 4.

(b) BEFORE PROMULGATING RULES, THE DIRECTOR SHALL SEEK INPUT AND ADVICE FROM A PERSON, OR ANY STATE PROFESSIONAL ORGANIZATION OF PERSONS, OFFERING SERVICES THAT REQUIRE REGISTRATION PURSUANT TO THIS ARTICLE.

(c) BEFORE PROMULGATING RULES, THE DIRECTOR MAY SEEK INPUT AND ADVICE FROM A CONSUMER REPRESENTATIVE WHO ADVOCATES FOR CONSUMERS AFFECTED BY THIS ARTICLE.

12-54-402. Fees. (1) THE DIRECTOR SHALL ESTABLISH AND COLLECT THE FEES FOR A REGISTRATION ISSUED UNDER THIS ARTICLE PURSUANT TO SECTION 24-34-105, C.R.S.

(2) ALL FEES COLLECTED BY THE DIRECTOR SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME PURSUANT TO SECTION 24-34-105, C.R.S., AND THE GENERAL ASSEMBLY SHALL MAKE ANNUAL APPROPRIATIONS FOR EXPENDITURES OF THE DIRECTOR REQUIRED TO PERFORM HIS OR HER DUTIES UNDER THIS ARTICLE, WHICH EXPENDITURES SHALL BE MADE FROM SUCH APPROPRIATIONS UPON VOUCHERS AND WARRANTS DRAWN PURSUANT TO LAW. THE DIVISION SHALL EMPLOY, SUBJECT TO SECTION 13 OF ARTICLE XII OF THE STATE CONSTITUTION, SUCH CLERICAL OR OTHER ASSISTANTS AS ARE NECESSARY FOR THE PROPER PERFORMANCE OF ITS WORK.

12-54-403. Immunity. THE DIRECTOR, ANY MEMBER OF THE

DIRECTOR'S STAFF, ANY PERSON ACTING AS A WITNESS OR CONSULTANT TO THE DIRECTOR, ANY WITNESS TESTIFYING IN A PROCEEDING AUTHORIZED UNDER THIS ARTICLE, AND ANY PERSON WHO LODGES A COMPLAINT PURSUANT TO THIS ARTICLE SHALL BE IMMUNE FROM LIABILITY IN ANY CIVIL ACTION FOR ACTS OCCURRING WHILE ACTING WITHIN THE SCOPE OF THE PERSON'S CAPACITY AS DIRECTOR, STAFF, CONSULTANT, WITNESS, OR COMPLAINANT RESPECTIVELY, IF THE PERSON WAS ACTING IN GOOD FAITH, MADE A REASONABLE EFFORT TO OBTAIN THE FACTS OF THE MATTER AS TO WHICH THE PERSON ACTED, AND ACTED IN THE REASONABLE BELIEF THAT THE ACTION TAKEN WAS WARRANTED BY THE FACTS. A PERSON PARTICIPATING IN GOOD FAITH IN LODGING A COMPLAINT OR PARTICIPATING IN ANY INVESTIGATIVE OR ADMINISTRATIVE PROCEEDING PURSUANT TO THIS ARTICLE SHALL BE IMMUNE FROM ANY CIVIL LIABILITY THAT MAY RESULT FROM SUCH PARTICIPATION.

12-54-404. Letters of concern. THE DIRECTOR MAY ISSUE AND SEND A CONFIDENTIAL LETTER OF CONCERN TO THE FUNERAL ESTABLISHMENT OR CREMATORY WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN INSTANCE OF CONDUCT THAT DOES NOT WARRANT FORMAL ACTION BY THE DIRECTOR AND, IN THE OPINION OF THE DIRECTOR, THE COMPLAINT SHOULD BE DISMISSED, BUT THE DIRECTOR HAS NOTICED INDICATIONS OF POSSIBLE ERRANT CONDUCT BY THE FUNERAL ESTABLISHMENT OR CREMATORY THAT COULD LEAD TO SERIOUS CONSEQUENCES IF NOT CORRECTED.

12-54-405. Letters of admonition - funeral homes and crematories. (1) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN INSTANCE OF MISCONDUCT THAT, IN THE OPINION OF THE DIRECTOR, DOES NOT WARRANT FORMAL ACTION BY THE DIRECTOR BUT THAT SHOULD NOT BE DISMISSED AS BEING WITHOUT MERIT, A LETTER OF ADMONITION MAY BE ISSUED AND SENT TO A PERSON BY CERTIFIED MAIL.

(2) WHEN A LETTER OF ADMONITION IS SENT BY THE DIRECTOR, THE SUBJECT SHALL BE ADVISED OF THE RIGHT TO REQUEST THAT FORMAL DISCIPLINARY PROCEEDINGS BE INITIATED TO ADJUDICATE THE PROPRIETY OF THE CONDUCT UPON WHICH THE LETTER OF ADMONITION IS BASED. THE SUBJECT SHALL MAKE THE REQUEST IN WRITING WITHIN TWENTY DAYS AFTER RECEIPT OF THE LETTER.

(3) IF THE REQUEST FOR ADJUDICATION IS TIMELY MADE, THE LETTER

OF ADMONITION SHALL BE DEEMED VACATED AND THE MATTER SHALL BE PROCESSED BY MEANS OF FORMAL DISCIPLINARY PROCEEDINGS.

12-54-406. Cease-and-desist orders - procedure. (1) (a) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE EVIDENCE AS PRESENTED IN A WRITTEN COMPLAINT, THAT A PERSON IS ACTING IN A MANNER THAT CREATES AN IMMINENT THREAT TO THE HEALTH AND SAFETY OF THE PUBLIC, OR A PERSON IS ACTING OR HAS ACTED WITHOUT THE REQUIRED REGISTRATION, THE DIRECTOR MAY ISSUE AN ORDER TO CEASE AND DESIST SUCH ACTIVITY. THE ORDER SHALL SET FORTH THE STATUTES AND RULES ALLEGED TO HAVE BEEN VIOLATED, THE FACTS ALLEGED TO HAVE CONSTITUTED THE VIOLATION, AND THE REQUIREMENT THAT ALL UNLAWFUL ACTS OR UNAUTHORIZED PRACTICES IMMEDIATELY CEASE.

(b) WITHIN TEN DAYS AFTER SERVICE OF THE ORDER TO CEASE AND DESIST PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1), THE RESPONDENT MAY REQUEST A HEARING ON THE QUESTION OF WHETHER THE ALLEGED ACTS OR PRACTICES HAVE OCCURRED. SUCH HEARING SHALL BE CONDUCTED PURSUANT TO SECTIONS 24-4-104 AND 24-4-105, C.R.S.

(2) (a) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE EVIDENCE AS PRESENTED IN A WRITTEN COMPLAINT, THAT A PERSON HAS VIOLATED THIS ARTICLE OR RULES PROMULGATED UNDER THIS ARTICLE, THEN, IN ADDITION TO ANY SPECIFIC POWERS GRANTED PURSUANT TO THIS ARTICLE, THE DIRECTOR MAY ISSUE TO SUCH PERSON AN ORDER TO SHOW CAUSE AS TO WHY THE DIRECTOR SHOULD NOT ISSUE A FINAL ORDER DIRECTING SUCH PERSON TO CEASE AND DESIST FROM SUCH VIOLATIONS.

(b) A PERSON AGAINST WHOM AN ORDER TO SHOW CAUSE HAS BEEN ISSUED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL BE PROMPTLY NOTIFIED BY THE DIRECTOR OF THE ISSUANCE OF THE ORDER, ALONG WITH A COPY OF THE ORDER, THE FACTUAL AND LEGAL BASIS FOR THE ORDER, AND THE DATE SET BY THE DIRECTOR FOR A HEARING ON THE ORDER. SUCH NOTICE MAY BE SERVED BY PERSONAL SERVICE, BY FIRST-CLASS UNITED STATES MAIL, POSTAGE PREPAID, OR AS MAY BE PRACTICABLE UPON ANY PERSON AGAINST WHOM SUCH ORDER IS ISSUED. PERSONAL SERVICE OR MAILING OF AN ORDER OR DOCUMENT PURSUANT TO THIS SUBSECTION (2) SHALL CONSTITUTE NOTICE THEREOF TO THE PERSON.

(c) (I) THE HEARING ON AN ORDER TO SHOW CAUSE SHALL BE

COMMENCED NO SOONER THAN TEN AND NO LATER THAN FORTY-FIVE CALENDAR DAYS AFTER THE DATE OF TRANSMISSION OR SERVICE OF THE NOTIFICATION BY THE DIRECTOR AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (2). THE HEARING MAY BE CONTINUED BY AGREEMENT OF ALL PARTIES BASED UPON THE COMPLEXITY OF THE MATTER, NUMBER OF PARTIES TO THE MATTER, AND LEGAL ISSUES PRESENTED IN THE MATTER, BUT IN NO EVENT SHALL THE HEARING COMMENCE LATER THAN SIXTY CALENDAR DAYS AFTER THE DATE OF TRANSMISSION OR SERVICE OF THE NOTIFICATION.

(II) IF A PERSON AGAINST WHOM AN ORDER TO SHOW CAUSE HAS BEEN ISSUED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) DOES NOT APPEAR AT THE HEARING, THE DIRECTOR MAY PRESENT EVIDENCE THAT NOTIFICATION WAS PROPERLY SENT OR SERVED UPON SUCH PERSON PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2) AND SUCH OTHER EVIDENCE RELATED TO THE MATTER AS THE DIRECTOR DEEMS APPROPRIATE. THE DIRECTOR SHALL ISSUE THE ORDER WITHIN TEN DAYS AFTER THE DIRECTOR'S DETERMINATION RELATED TO REASONABLE ATTEMPTS TO NOTIFY THE RESPONDENT, AND THE ORDER SHALL BECOME FINAL AS TO THAT PERSON BY OPERATION OF LAW. SUCH HEARING SHALL BE CONDUCTED PURSUANT TO SECTIONS 24-4-104 AND 24-4-105, C.R.S.

(III) IF THE DIRECTOR REASONABLY FINDS THAT THE PERSON AGAINST WHOM THE ORDER TO SHOW CAUSE WAS ISSUED IS ACTING OR HAS ACTED WITHOUT THE REQUIRED REGISTRATION OR HAS ENGAGED IN ACTS OR PRACTICES CONSTITUTING VIOLATIONS OF THIS ARTICLE OR RULES PROMULGATED UNDER THIS ARTICLE, A FINAL CEASE-AND-DESIST ORDER MAY BE ISSUED, DIRECTING SUCH PERSON TO CEASE AND DESIST FROM FURTHER VIOLATIONS.

(IV) THE DIRECTOR SHALL PROVIDE NOTICE, IN THE MANNER SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (2), OF THE FINAL CEASE-AND-DESIST ORDER WITHIN TEN CALENDAR DAYS AFTER THE HEARING CONDUCTED PURSUANT TO THIS PARAGRAPH (c) TO EACH PERSON AGAINST WHOM THE FINAL ORDER HAS BEEN ISSUED. THE FINAL ORDER SHALL BE EFFECTIVE WHEN ISSUED AND SHALL BE A FINAL ORDER FOR PURPOSES OF JUDICIAL REVIEW.

(3) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE EVIDENCE PRESENTED TO THE DIRECTOR, THAT A PERSON HAS ENGAGED IN AN ACT OR PRACTICE CONSTITUTING A VIOLATION OF THIS ARTICLE, A RULE

PROMULGATED PURSUANT TO THIS ARTICLE, AN ORDER ISSUED PURSUANT TO THIS ARTICLE, OR AN ACT OR PRACTICE CONSTITUTING GROUNDS FOR ADMINISTRATIVE SANCTION PURSUANT TO THIS ARTICLE, THE DIRECTOR MAY ENTER INTO A STIPULATION WITH THE PERSON.

(4) IF A PERSON FAILS TO COMPLY WITH A FINAL CEASE-AND-DESIST ORDER OR A STIPULATION, THE DIRECTOR MAY REQUEST THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY FOR THE JUDICIAL DISTRICT IN WHICH THE ALLEGED VIOLATION EXISTS TO BRING, AND IF SO REQUESTED SUCH ATTORNEY SHALL BRING, SUIT FOR A TEMPORARY RESTRAINING ORDER AND FOR INJUNCTIVE RELIEF TO PREVENT ANY FURTHER OR CONTINUED VIOLATION OF THE FINAL ORDER.

(5) A PERSON AGGRIEVED BY THE FINAL CEASE-AND-DESIST ORDER MAY SEEK JUDICIAL REVIEW OF THE DIRECTOR'S DETERMINATION OR OF THE DIRECTOR'S FINAL ORDER.

12-54-407. Civil penalty - fine. (1) ON MOTION OF THE DIRECTOR, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR A VIOLATION OF THIS ARTICLE OR A RULE PROMULGATED UNDER THIS ARTICLE. THE PENALTY SHALL BE TRANSMITTED TO THE STATE TREASURER AND CREDITED TO THE GENERAL FUND.

(2) IN ADDITION TO ANY OTHER PENALTY THAT MAY BE IMPOSED PURSUANT TO THIS SECTION, A FUNERAL ESTABLISHMENT OR CREMATORY VIOLATING THIS ARTICLE OR A RULE PROMULGATED PURSUANT TO THIS ARTICLE MAY BE FINED NO LESS THAN ONE HUNDRED DOLLARS AND NO MORE THAN FIVE THOUSAND DOLLARS FOR EACH VIOLATION PROVEN BY THE DIRECTOR. ALL FINES COLLECTED PURSUANT TO THIS SUBSECTION (2) SHALL BE TRANSFERRED TO THE STATE TREASURER, WHO SHALL CREDIT SUCH MONEYS TO THE GENERAL FUND.

12-54-408. Enforcement - injunctions. (1) THE DIRECTOR MAY FORWARD TO A DISTRICT ATTORNEY OR A STATE OR FEDERAL LAW ENFORCEMENT AGENCY ANY INFORMATION CONCERNING POSSIBLE VIOLATIONS OF STATUTE OR RULE UNDER THIS ARTICLE COMMITTED BY ANY PERSON OR COMPLAINTS FILED AGAINST A FUNERAL DIRECTOR, MORTUARY SCIENCE PRACTITIONER, CREMATIONIST, OR EMBALMER.

(2) THE DIRECTOR MAY REQUEST THAT AN ACTION BE BROUGHT IN

THE NAME OF THE PEOPLE OF THE STATE OF COLORADO BY THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY OF THE DISTRICT IN WHICH THE VIOLATION IS ALLEGED TO HAVE OCCURRED TO ENJOIN A PERSON FROM ENGAGING IN OR CONTINUING THE VIOLATION OR FROM DOING ANY ACT THAT FURTHERS THE VIOLATION. IN SUCH AN ACTION, AN ORDER OR JUDGMENT MAY BE ENTERED AWARDING SUCH PRELIMINARY OR FINAL INJUNCTION AS IS DEEMED PROPER BY THE COURT. THE NOTICE, HEARING, OR DURATION OF AN INJUNCTION OR RESTRAINING ORDER SHALL BE MADE IN ACCORDANCE WITH THE COLORADO RULES OF CIVIL PROCEDURE.

12-54-409. Deferment prohibited. WHEN A COMPLAINT OR AN INVESTIGATION DISCLOSES MISCONDUCT THAT, IN THE OPINION OF THE DIRECTOR, WARRANTS FORMAL ACTION, THE COMPLAINT SHALL NOT BE RESOLVED BY A DEFERRED SETTLEMENT, ACTION, JUDGMENT, OR PROSECUTION.

12-54-410. Repeal. SECTIONS 12-54-110, 12-54-111, 12-54-303, AND 12-54-304 AND THIS PART 4 ARE REPEALED, EFFECTIVE JULY 1, 2015. PRIOR TO SUCH REPEAL, THE REGULATION OF PERSONS REGISTERED TO PRACTICE CREMATION AND MORTUARY SCIENCE SHALL BE REVIEWED PURSUANT TO SECTION 24-34-104, C.R.S.

SECTION 11. 24-34-104 (46), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (46) The following agencies, functions, or both, shall terminate on July 1, 2015:

(l) THE REGULATION OF PERSONS REGISTERED TO PRACTICE MORTUARY SCIENCE PURSUANT TO SECTIONS 12-54-110 AND 12-54-111, C.R.S., AND CREMATION PURSUANT TO SECTIONS 12-54-303 AND 12-54-304, C.R.S., AND THE ADMINISTRATION THEREOF PURSUANT TO PART 4 OF ARTICLE 54 OF TITLE 12, C.R.S.

SECTION 12. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of registrations cash fund created in section 24-34-105 (2) (b) (I), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of registrations, for the

regulation of persons who provide for the final disposition of dead human bodies in the normal course of business, for the fiscal year beginning July 1, 2009, the sum of one hundred fifty-eight thousand six hundred fourteen dollars ($158,614) cash funds and 1.4 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2009, the sum of twenty-four thousand seven hundred eighty-three dollars ($24,783) and 0.2 FTE, or so much thereof as may be necessary, for the provision of legal services to the department of regulatory agencies related to the implementation of this act. Said sum shall be from reappropriated funds received from the department of regulatory agencies out of the appropriation made in subsection (1) of this section.

SECTION 13. Effective date - applicability. This act shall take effect July 1, 2009, and shall apply to offenses committed, including failure to register as required by this act, on or after January 1, 2010.

SECTION 14. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Terrance D. Carroll SPEAKER OF THE HOUSE OF REPRESENTATIVES	Brandon C. Shaffer PRESIDENT OF THE SENATE
Marilyn Eddins CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES	Karen Goldman SECRETARY OF THE SENATE

APPROVED_____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO