

ARTICLE 20:45

FUNERAL SERVICE

Chapter

- 20:45:01 Meetings and hearings, Repealed.
- 20:45:02 General regulations and definitions.
- 20:45:03 Licensing requirements.
- 20:45:04 License fees, Repealed.
- 20:45:05 Crematories and cremations.

CHAPTER 20:45:01

MEETINGS AND HEARINGS

Section

- 20:45:01:01 State board meetings, Repealed.
- 20:45:01:02 Hearings, Repealed.
- 20:45:01:03 Reviewing of contested cases, Repealed.

20:45:01:01. State board meetings. ~~A regular meeting of the State Board of Funeral Service shall be held during the South Dakota state funeral director's convention. Special meetings may be called by the chair of the board as the chair considers necessary~~ Repealed.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 19 SDR 35, effective August 27, 1992.

General Authority: ~~SDCL 36-19-6.~~

Law Implemented: ~~SDCL 36-19-6.~~

20:45:01:02. Hearings. ~~Notice of any charges against a licensee and notice of the time and place for a hearing on the charges shall be served upon a licensee not less than 20 days before the hearing. The hearing may be continued for a reasonable amount of time at the discretion of the board or its legal counsel. The licensee may be present at the hearing, either in person or by counsel, or both, and may request the board to subpoena witnesses that the licensee desires to be heard at the hearing. Witnesses shall be allowed the statutory fee and travel expenses. In any contested case, a transcript of the hearing shall be kept by a court reporter, or the hearing shall be tape recorded. If a transcript is ordered, the party ordering the transcript shall pay any cost or fee associated with the transcript.~~ Repealed.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 30 SDR 215, effective July 14, 2004.

General Authority: ~~SDCL 36-19-9(5).~~

Law Implemented: ~~SDCL 36-19-12.~~

Cross References: ~~Procedure in licensing matters, SDCL 1-26-16 to 1-26-19.1; Fees and mileage of witnesses, SDCL 19-5-1.~~

20:45:01:03. Reviewing of contested cases. ~~Petitions for review of decisions on contested cases may be made to the board pursuant to SDCL chapter 1-26. For the purpose of reviewing the decisions, the board may appoint a committee made up of a portion of the board's membership. The committee shall enter written findings. The findings of the committee must be reported to the full board for action. The board, in writing, shall adopt, reject, or modify the committee findings, and issue its written decision. Nothing in this section prevents or delays an aggrieved person from making an immediate appeal from any decision of the board to the circuit court as provided by SDCL chapter 1-26.~~ Repealed.

Source: SL 1975, ch 16, § 1; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 30 SDR 215, effective July 14, 2004.

General Authority: ~~SDCL 36-19-9(5).~~

Law Implemented: ~~SDCL 36-19-12.~~

Cross Reference: ~~Procedure for contested cases, SDCL 1-26-16 to 1-26-29.~~

CHAPTER 20:45:02

GENERAL REGULATIONS AND DEFINITIONS

Section

- 20:45:02:01 Inspection of premises.
- 20:45:02:02 ~~Equipment required for funeral establishment~~ Preparation room -- Requirements.
- 20:45:02:03 ~~Maintenance of preparation room~~ Preparation room -- Maintenance.
- 20:45:02:04 False listings, Repealed.
- 20:45:02:05 Written contract required.
- 20:45:02:05.01 Pricing of merchandise.
- 20:45:02:06 Prearranged funeral contracts.
- 20:45:02:07 Length of time an unembalmed body may be kept.
- 20:45:02:08 Definitions.

20:45:02:01. Inspection of premises. ~~Each~~ The board shall inspect each funeral establishment shall be inspected in the following areas:

- ~~—— (1) Posting of establishment and licensee's licenses;~~
- ~~—— (2) Stock of caskets;~~
- ~~—— (3) Price of caskets, vaults, and other merchandise marked;~~
- ~~—— (4) Use of written contract as required by § 20:45:02:05;~~
- ~~—— (5) Possession of funeral car and mortuary cot;~~
- ~~—— (6) General cleanliness of preparation room;~~
- ~~—— (7) Possession of working ventilation fan in preparation room;~~
- ~~—— (8) Possession of approved floor;~~

- ~~—— (9) Possession of operable aspirator in preparation room;~~
- ~~—— (10) Protection for water supply;~~
- ~~—— (11) Cleanliness and sterilization of instruments, including hypodermic needles and syringes; and~~
- ~~—— (12) Possession and cleanliness of waste receptacle in accordance with SDCL 36-19-31 to determine compliance with SDCL chapter 36-19 and this article.~~

The funeral establishment shall correct ~~an existing~~ a violation found during the inspection within ~~20~~ twenty days of inspection, ~~and after which~~ the board ~~shall~~ must reinspect the premises. ~~An uncorrected violation is cause for revocation of license.~~ The board may extend this time at its discretion. A violation that is not corrected during this time is cause for revocation or suspension of license. If at the time of renewal of the establishment license there is still a violation, the establishment license may not be renewed until the violation is corrected, but a temporary license may be issued for ~~30~~ thirty days to allow time for correction of the violation. A funeral establishment shall pay the costs of the second reinspection and subsequent reinspections.

A funeral establishment ~~shall~~ must be open for inspection. Refusal of inspection is cause for not renewing an establishment license as well as grounds for revoking or suspending an establishment license.

Source: SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 30 SDR 215, effective July 14, 2004.

General Authority: SDCL ~~36-19-9(2)~~ 36-19-12.1.

Law Implemented: SDCL ~~36-19-28~~ 36-19-27, 36-19-31, 36-19-32.

20:45:02:02. ~~Equipment required for funeral establishment~~ Preparation room --

Requirements. The term, funeral establishment, is defined at SDCL 36-19-1(4) and includes any place ~~where embalming is performed.~~ The funeral establishment preparation room ~~of a funeral establishment~~ must be equipped with the following:

- (1) ~~Embalming~~ An embalming table;
- (2) Instruments for embalming;
- (3) ~~Sink~~ A sink connected to a public sewer or septic tank;
- (4) ~~Electric~~ An electric aspirator or hydroaspirator ~~which is equipped with an automatic vacuum breaker to prevent contamination of the water supply;~~
- (5) ~~Embalming~~ An embalming machine or equipment;
- (6) ~~Sanitary floor~~ A floor that is smooth, nonabsorbent, and easily cleaned and sanitized;
- (7) Ventilation;
- (8) ~~Exhaust~~ An exhaust fan;
- (9) Embalming fluid;
- (10) Hardening compound;
- (11) Rubber, plastic, latex, or vinyl goods;
- (12) Body pouches;
- (13) Disinfectant;
- (14) Rubber, latex, or vinyl gloves;
- (15) Aprons; and
- (16) Receptacles for refuse, bandages, cotton, and other waste materials.

Source: SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 21 SDR 118, effective January 2, 1995; 30 SDR 215, effective July 14, 2004; 36 SDR 57, effective October 22, 2009.

General Authority: SDCL ~~36-19-9(1)~~ 36-19-12.1.

Law Implemented: SDCL ~~36-19-28~~ 36-19-38(14).

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20:45:02:03. ~~Maintenance of preparation room~~ Preparation room -- Maintenance. All refuse, bandages, cotton, and other waste materials ~~shall~~ must be disposed of at the conclusion of each embalming case. All preparation rooms ~~shall~~ must be maintained in a clean and sanitary condition. All embalming tables, sinks, floors, receptacles, instruments, and other appliances used in the embalming of bodies ~~shall~~ must be thoroughly cleansed and sanitized with a suitable and ~~an~~ effective sanitizing agent immediately at the conclusion of each embalming case.

Source: SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL ~~36-19-9~~ 36-19-12.1.

Law Implemented: SDCL ~~36-19-28~~ 36-19-38(14).

20:45:02:04. False listings. ~~A listing in directories, newspapers, radio stations, television stations, or other printed or oral media indicating the location of a funeral establishment in a town, city, or community in which the listed funeral establishment is not located is considered false advertising and grounds for revocation of licenses~~ Repealed.

Source: SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: ~~SDCL 36-19-9.~~

Law Implemented: ~~SDCL 36-19-12.~~

20:45:02:05. Written contract required. At the time funeral arrangements are made, a funeral establishment home representative shall give to the ~~person making or ordering a funeral purchaser~~ a written contract ~~which contains~~ containing the following:

(1) Any service that has been or will be performed, including the removal of the body and transportation, ~~and~~ any merchandise selected, and the itemized price for any service and merchandise;

(2) The supplemental items of service or merchandise requested and the price of each item;

(3) Insofar as it can be specified at that time, the items for which the funeral director will advance money as an accommodation; and

(4) The terms ~~or~~ and method of payment.

The funeral contract ~~shall~~ must be signed by the purchaser and a funeral home representative. A copy of the funeral contract ~~shall~~ must be given to the purchaser upon signing. A copy of the contract ~~shall~~ must also be retained by the funeral establishment for seven years after completing the contracted services.

Source: SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 30 SDR 215, effective July 14, 2004.

General Authority: SDCL ~~36-19-9(5)~~ 36-19-12.1.

Law Implemented: SDCL ~~36-19-9~~ 36-19-38(15).

20:45:02:05.01. Pricing of merchandise. A licensed funeral home shall display the price of caskets, vaults, and other merchandise.

Source:

General Authority: SDCL 36-19-12.1.

Law Implemented: SDCL 36-19-38(15).

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20:45:02:06. Prearranged funeral contracts. ~~A prearranged funeral contract includes any transaction in which a person, or someone on the person's behalf, before the person's death, contracts with a funeral establishment for the purchase or rental of personal property or professional services for the final disposition of the person's body. A prearranged funeral shall~~ must be contracted for on a form prepared by the funeral establishment. The form ~~shall~~ must comply with SDCL chapter 55-11 and ~~shall~~ must be in triplicate. One copy ~~shall~~ must be kept in the funeral establishment. One copy ~~shall~~ must be delivered to the purchaser or beneficiary of the fund. One copy ~~shall~~ must be delivered to the bank, federal credit union, or savings and loan association, if applicable left with the depository as directed by SDCL 55-11-3. Any funeral establishment and licensee, who is a party to a prearranged funeral contract, must be knowledgeable of and must fully comply with SDCL chapter 55-11, ~~and any.~~ Any violation of SDCL chapter 55-11 is grounds for revocation or suspension of a license. Any prearranged funeral contract funded by an insurance policy purchased from or through a funeral establishment for the purpose of paying, in whole or in part, for the purchase or rental of personal property and professional services for the final disposition of a body requires the funeral establishment to prepare a form itemizing ~~such the~~ property and services and to deliver a copy to the purchaser or beneficiary of the contract ~~and to retain a.~~ A copy of the contract must also be retained by the funeral establishment for seven years after completing the contracted services.

Source: SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 30 SDR 215, effective July 14, 2004.

General Authority: SDCL ~~36-19-9(5)~~ 36-19-12.1.

Law Implemented: SDCL ~~36-19-9(5)~~, 55-11-3, 55-11-7, 55-11-9.

20:45:02:07. Length of time an unembalmed body may be kept. ~~An unembalmed body may be kept no longer than 24 hours from the time of death.~~ Within ~~24~~ twenty-four hours from the time of death, the body ~~shall~~ must be refrigerated, embalmed, ~~cremated~~, or buried in the ground. Any deviation from the foregoing requirements may only occur by an order of a court of competent jurisdiction or written directive of a coroner.

Source: 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 30 SDR 215, effective July 14, 2004.

General Authority: SDCL ~~36-19-9(5)~~ 36-19-12.1.

Law Implemented: SDCL 34-26-15.

20:45:02:08. Definitions. Terms defined in SDCL 36-19-1 have the same meaning when used in this article. As used in this article, the term, sponsor, means a funeral director licensed in accordance with SDCL chapter 36-19 who is supervising a trainee in funeral service.

Source:

General Authority: SDCL 36-19-12.1.

Law Implemented: SDCL 36-19-1, 36-19-21.

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CHAPTER 20:45:03
LICENSING REQUIREMENTS

Section

- 20:45:03:01 Minimum qualifications of trainee.
- 20:45:03:02 Traineeship in funeral service.
- 20:45:03:02.01 Mortuary student trainee, Repealed.
- 20:45:03:03 College coursework requirements, Repealed.
- 20:45:03:03.01 Acceptance of National Board Examination, Repealed.
- 20:45:03:04 Filing of application, Repealed.
- 20:45:03:04.01 Incomplete application.
- 20:45:03:05 Failure to pass examination, Repealed.
- 20:45:03:06 Repealed.
- 20:45:03:07 Renewal of lapsed license, Repealed.
- 20:45:03:08 Fees.

20:45:03:01. Minimum qualifications of trainee. An applicant for registration as a trainee in funeral service shall have a high school education or a high school equivalent education, be at least ~~18~~ eighteen years of age, and be of good moral character.

Source: SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL ~~36-19-9~~ 36-19-12.1.

Law Implemented: SDCL ~~36-19-9~~ 36-19-1(5), 36-19-18.

20:45:03:02. Traineeship in funeral service. ~~A trainee in funeral service must complete one year's work of traineeship before being eligible for licensure. For purposes of this rule section, one year's work is 12 twelve months, either consecutive or non-consecutive, and in no event may the traineeship be less than 2,080 two thousand eighty hours. Although the 12-month twelve-month period is not required to be completed in consecutive succession, a trainee must reapply for registration if the trainee seeks to resume duties after being terminated by a sponsor, or if the trainee changes sponsors for any reason. The traineeship may be served under different funeral service licensees licensed in accordance with SDCL chapter 36-19 and in different funeral establishments licensed by the state of South Dakota in accordance with SDCL chapter 36-19. The trainee must be a citizen of the United States or a resident of South Dakota. The traineeship may must be completed in one-month segments, or unless in special circumstances the board finds good cause for shorter segments, the traineeship may be completed in segments of time that are otherwise acceptable to the board so long as the total traineeship hours are not less than 2,080 hours. The Board of Funeral Service may extend the 12 months of traineeship at its discretion for unusual circumstances.~~

A funeral service licensee may not sponsor more than one trainee at a time. The sponsoring funeral service licensee is fully responsible for the trainee's actions and work in funeral service. The sponsor and the trainee shall notify the board immediately of the termination or temporary discontinuance of supervision of a trainee.

To maintain registration, ~~The the~~ trainee ~~shall~~ must file with the board at least ~~25~~ twenty-five acceptable embalming case reports on forms provided by the board ~~for the purpose~~, along with ~~12~~ twelve monthly report cards. The trainee shall assist in the direction of at least ~~25~~ twenty-five funerals and present ~~5~~ five sets of arrangements. ~~All~~ The trainee must perform all work ~~shall~~

be performed as a trainee under the supervision of the trainee's ~~registered~~ funeral service sponsor or another licensee in the sponsor's establishment.

~~Both the sponsor and the trainee must notify the board if a traineeship is terminated. The A~~
terminated traineeship may be reinstated if the trainee applies again to the board. A traineeship may be completed before or after completing mortuary college.

Any funeral service licensee, including a sponsor or the owner of a funeral establishment, who allows a person to do the work of a trainee when that person is not registered with the board or when that person has completed the traineeship program, is subject to license revocation or suspension.

Source: SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 19 SDR 35, effective August 27, 1992; 21 SDR 118, effective January 2, 1995; 30 SDR 215, effective July 14, 2004.

General Authority: SDCL ~~36-19-9(3)~~ 36-19-12.1.

Law Implemented: SDCL 36-19-18, 36-19-21(5), 36-19-38(7)(13).

20:45:03:02.01. Mortuary student trainee. ~~Any student enrolled in a course of study from a college of mortuary science accredited by the American Board of Funeral Service Education, Inc. may perform the same duties as a trainee if the student provides, to the board, proof of enrollment in an accredited course of study and of obtaining a mortuary student certificate to practice as a mortuary student trainee. This practice does not apply toward the 12 months of traineeship as required by § 20:45:03:02 but may apply to the student's education.~~ Repealed.

Source: 37 SDR 237, effective June 30, 2011.

General Authority: ~~SDCL 36-19-9(3).~~

Law Implemented: ~~SDCL 36-19-18.~~

20:45:03:03. College coursework requirements. ~~An applicant for a funeral service license must successfully complete the prescribed course of study from a college of mortuary science accredited by the American Board of Funeral Service Education, Inc. In addition, the applicant must complete an academic course requirement of 60 semester hours credit from an accredited college or university. The board requires coursework in each of the following areas:~~

~~—— (1) Communications or the equivalent, for example:~~

~~—— (a) Speech;~~

~~—— (b) English composition;~~

~~—— (2) Social science or the equivalent, for example:~~

~~—— (a) Sociology;~~

~~—— (b) Psychology;~~

~~—— (3) Natural science or the equivalent, for example:~~

~~—— (a) Chemistry;~~

~~—— (b) Biology;~~

~~—— (c) Microbiology;~~

~~—— (d) Anatomy;~~

~~—— (4) Business or the equivalent, for example:~~

~~—— (a) Accounting;~~

~~—— (b) Business law;~~

~~—— (c) Business management; and~~

~~—— (5) Electives Repealed.~~

Source: SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 19 SDR 35, effective August 27, 1992; 21 SDR 118, effective January

2, 1995; 34 SDR 101, effective October 24, 2007; 36 SDR 57, effective October 22, 2009; 37 SDR 237, effective June 30, 2011.

General Authority: ~~SDCL 36-19-9(3).~~

Law Implemented: ~~SDCL 36-19-21.~~

Reference: ~~The Conference of Funeral Service State Board Rosters and Accredited Mortuary Schools, September, 1994. The Conference of Funeral Service Examining Boards, First Security Bank Building, 2404 Washington Blvd., Suite 1000, Ogden, UT 84401. Copies may be obtained free of charge from the South Dakota Board of Funeral Service, 810 N. Main Street, Suite 298, Spearfish, SD 57783, phone (605) 642-1600, FAX (605) 722-1006.~~

20:45:03:03.01. Acceptance of National Board Examination. ~~If an applicant for a license to practice mortuary science has satisfactorily passed the National Board Examination given by the Conference of Funeral Service Examining Boards of the United States, Incorporated, and is so certified by the commissioner of the conference, the State Board of Funeral Service may accept the results of the National Board Examination. In addition, the applicant shall successfully pass an examination on laws of the state of South Dakota and the rules of the State Board of Funeral Service. The examination shall include questions pertaining to registration of deaths, embalming, transportation, disposition of dead human bodies, and funeral directing. In order to accept the results of the National Board Examination, the State Board of Funeral Service shall first determine that the knowledge and skills assessed by the examination adequately and accurately evaluate the knowledge and skills needed for actual job performance~~ Repealed.

Source: 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: ~~SDCL 36-19-9.~~

Law Implemented: ~~SDCL 36-19-23.~~

20:45:03:04. Filing of application. ~~An applicant for licensure as a funeral director shall submit a complete application to the Board of Funeral Service at least 15 days before the examination date on a form procured from the secretary of the board. The board shall timely approve or disapprove the application and shall forthwith notify the applicant of the approval or disapproval. Only approved applicants shall be allowed to sit for the examination. The application shall contain identifying information, including the applicant's full name, age, and mailing address; a record of the applicant's education; a certificate of apprenticeship; personal recommendations; and a certificate of the national conference examination. The applicant shall furnish certified high school, college, and mortuary college transcripts from accredited schools containing a list of subjects completed with the individual grades and credits. The applicant shall include a photo and the application fee required by § 20:45:04:02 Repealed.~~

Source: SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 30 SDR 215, effective July 14, 2004.

General Authority: ~~SDCL 36-19-9(3).~~

Law Implemented: ~~SDCL 36-19-20.~~

20:45:03:04.01. Incomplete application. A licensure application deemed incomplete by board staff must be completed within one year from the date received by the board, or the board must consider it withdrawn. The executive secretary shall notify the applicant if an application is so withdrawn. The applicant is not precluded from reapplying by submitting all required documents, information, non-refundable fees, and application materials.

Source:

General Authority: SDCL 36-19-12.1.

Law Implemented: SDCL 36-19-21, 36-19-27.

20:45:03:05. Failure to pass examination. ~~An applicant who fails the examination may appear before the board within one year after the first examination and may take and complete a second examination. The second examination may be taken without an additional fee. An individual must complete the entire application process and pay the appropriate fee in order to take a third or any subsequent examination.~~ Repealed.

Source: SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 30 SDR 215, effective July 14, 2004.

General Authority: ~~SDCL 36-19-9(3).~~

Law Implemented: ~~SDCL 36-19-20.~~

20:45:03:07. Renewal of lapsed license. ~~A licensed funeral service director who does not renew the license may have licensure restored at any time within three years by applying to the Board of Funeral Service and paying the license fee required in § 20:45:04:03 for each year the license has lapsed. Licensees whose licenses have lapsed for more than three years must complete requirements for licensure as required in SDCL chapter 36-19 Repealed.~~

Source: SL 1975, ch 16, § 1; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 18 SDR 59, effective October 2, 1991; 30 SDR 215, effective July 14, 2004.

General Authority: ~~SDCL 36-19-9(3).~~

Law Implemented: ~~SDCL 36-19-12, 36-19-37.~~

20:45:03:08. Fees. The fees for licenses and registrations issued by the board are as follows and are nonrefundable:

- (1) Trainee registration fee, twenty-five dollars;
- (2) Funeral director license application fee, one hundred and twenty-five dollars;
- (3) Annual funeral director license renewal fee; one hundred and twenty-five dollars;
- (4) Funeral establishment license application fee, two hundred and fifty dollars; and
- (5) Annual funeral establishment license renewal fee, two hundred and fifty dollars.

Source:

General Authority: SDCL 36-19-12.1.

Law Implemented: SDCL 36-19-18, 36-19-25, 36-19-27, 36-19-37.

CHAPTER 20:45:04

LICENSE FEES

(Repealed)

Section

- 20:45:04:01 Registration fee -- Trainee, Repealed.
- 20:45:04:02 Repealed.
- 20:45:04:03 Annual renewal fee -- Funeral director's license, Repealed.
- 20:45:04:04 Application fee -- Funeral establishment license, Repealed.
- 20:45:04:05 Annual renewal fee -- Funeral establishment license, Repealed.
- 20:45:04:06 Repealed.
- 20:45:04:07 Application fee -- Funeral service license, Repealed.
- 20:45:04:08 Annual renewal fee -- Funeral service license, Repealed.

20:45:04:01. Registration fee -- Trainee. ~~The registration fee for a trainee in funeral service is \$25~~ Repealed.

Source: 4 SDR 27, effective November 8, 1977; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 18 SDR 59, effective October 2, 1991.

General Authority: ~~SDCL 36-19-9.~~

Law Implemented: ~~SDCL 36-19-18.~~

20:45:04:03. Annual renewal fee -- Funeral director's license. ~~The annual renewal fee for a funeral director's license is \$50~~ Repealed.

Source: 4 SDR 27, effective November 8, 1977; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 18 SDR 59, effective October 2, 1991.

~~General Authority:~~ ~~SDCL 36-19-9.~~

~~Law Implemented:~~ ~~SDCL 36-19-25.~~

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20:45:04:04. Application fee -- Funeral establishment license. ~~The application fee for a funeral establishment license is \$250~~ Repealed.

Source: 4 SDR 27, effective November 8, 1977; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 18 SDR 59, effective October 2, 1991; 34 SDR 101, effective October 24, 2007; 36 SDR 57, effective October 22, 2009.

General Authority: ~~SDCL 36-19-27.~~

Law Implemented: ~~SDCL 36-19-27.~~

20:45:04:05. Annual renewal fee -- Funeral establishment license. ~~The annual renewal fee for each separate funeral establishment license is \$250~~ Repealed.

Source: 4 SDR 27, effective November 8, 1977; 9 SDR 59, effective November 14, 1982; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 18 SDR 59, effective October 2, 1991; 34 SDR 101, effective October 24, 2007; 36 SDR 57, effective October 22, 2009.

General Authority: ~~SDCL 36-19-37.~~

Law Implemented: ~~SDCL 36-19-37.~~

20:45:04:07. Application fee -- Funeral service license. ~~The application fee for a funeral service license is \$125~~ Repealed.

Source: 21 SDR 118, effective January 2, 1995; 34 SDR 101, effective October 24, 2007; 36 SDR 57, effective October 22, 2009.

~~**General Authority:** SDCL 36-19-25.~~

~~**Law Implemented:** SDCL 36-19-25.~~

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20:45:04:08. Annual renewal fee -- Funeral service license. ~~The annual renewal fee for a funeral service license is \$125~~ Repealed.

Source: 21 SDR 118, effective January 2, 1995; 34 SDR 101, effective October 24, 2007; 36 SDR 57, effective October 22, 2009.

~~General Authority:~~ ~~SDCL 36-19-25.~~

~~Law Implemented:~~ ~~SDCL 36-19-25.~~

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CHAPTER 20:45:05

CREMATORIES AND CREMATIONS

Section

- 20:45:05:01 Definition of terms, Repealed.
- 20:45:05:02 Applicability, Repealed.
- 20:45:05:03 Application for licensure or renewal of license – Fee, Repealed.
- 20:45:05:04 Issuance of license – Denial, Repealed.
- 20:45:05:05 Annual inspection -- Correction of violations, Repealed.
- 20:45:05:06 Suspension or revocation of license.
- 20:45:05:07 Human remains defined, Repealed.
- 20:45:05:08 Physicians and medical facilities disposing of human remains required to be licensed, Repealed.
- 20:45:05:09 Container requirements for accepting pathological waste, Repealed.
- 20:45:05:10 Occupant protection, Repealed.
- 20:45:05:11 Refrigeration requirements.
- 20:45:05:12 Embalming requirements, Repealed.
- 20:45:05:13 Construction standards, Repealed.
- 20:45:05:14 Notice of construction or alteration of crematories, Repealed.
- 20:45:05:15 Fire safety standards.
- 20:45:05:16 Fire safety requirements for crematories attached to funeral establishments.

20:45:05:01. Definition of terms. ~~Terms defined in SDCL 34-26A-1 have the same meaning in this chapter. In addition, terms used in this chapter mean:~~

- (1) ~~"Ambulatory surgery center," as defined in SDCL 34-12-1.1(1);~~
- (2) ~~"Authorizing agent," as defined in SDCL 34-26A-2;~~
- (3) ~~"Biohazard label," a distinctive red or orange label used to identify pathological waste as potentially infectious;~~
- (4) ~~"Body parts," limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research; or human bodies or any portion of bodies that have been donated to science for medical research purposes;~~
- (5) ~~"Funeral establishment," as defined in SDCL 36-19-1(4);~~
- (6) ~~"Hospital," as defined in SDCL 34-12-1.1(4);~~
- (7) ~~"Medical laboratory," a place where scientific examination on human tissue and organ specimens is conducted to aid in medical diagnosis or treatment;~~
- (8) ~~"Pathological waste," human tissues, organs, and blood or body fluids in liquid or semiliquid form that are removed from a person for medical purposes during treatment, surgery, biopsy, or autopsy;~~
- (9) ~~"Pulverization," the reduction of identifiable bone fragments after the completion of the cremation process to granulated particles by manual or mechanical means;~~
- (10) ~~"Physician," a person who is licensed or approved to practice medicine pursuant to SDCL chapter 36-4;~~
- (11) ~~"Sanitary condition," free of dirt, foreign particles, blood stains, offensive odors, and insects; and~~

(12) ~~"Universal precautions," procedures for handling human remains and pathological waste which are intended to prevent parenteral, mucous membrane, and non-intact skin exposures of persons to disease-causing agents~~ Repealed.

Source: 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:01, 26 SDR 87, effective December 9, 1999.

General Authority: ~~SDCL 34-26A-33.~~

Law Implemented: ~~SDCL 34-26A-33.~~

20:45:05:02. Applicability. ~~This chapter applies to new crematories, to existing crematories in operation on April 2, 1989, and to subsequent renovations, additions, and changes in space use of crematories licensed by the board~~ Repealed.

Source: 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:02, 26 SDR 87, effective December 9, 1999.

General Authority: ~~SDCL 34-26A-33.~~

Law Implemented: ~~SDCL 34-26A-33.~~

20:45:05:03. Application for licensure or renewal of license -- Fee. ~~For new crematories or crematories not previously licensed, application forms for licensure as a crematory authority may be requested from the board. For license renewals, the board shall mail each year to each licensed crematory authority notice that license renewal is due. Unless renewed pursuant to SDCL chapter 34-26A and this chapter, licenses issued under SDCL chapter 34-26A expire on December 31 following their issuance or renewal. A license may not be transferred or assigned by the crematory authority establishment. A person submitting an application for the following entities must submit the information as follows::~~

~~(1) A sole proprietorship must submit the applicant's full name and address for both the business and applicant's residence;~~

~~(2) A partnership must submit the full name and address of each partner;~~

~~(3) An association must submit the name and address of every member of the board of directors; or~~

~~(4) A corporation must submit the name and address of every officer, director, and shareholder holding more than 25 percent of the corporate stock.~~

~~An applicant must also pay the fee set forth in SDCL 34-26A-4 when submitting the application to the board Repealed.~~

Source: 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:03, 26 SDR 87, effective December 9, 1999; 30 SDR 215, effective July 14, 2004.

General Authority: ~~SDCL 34-26A-33.~~

Law Implemented: ~~SDCL 34-26A-4, 34-26A-33.~~

20:45:05:04. Issuance of license -- Denial. ~~The board shall issue or renew a license after payment of the fee required by SDCL 34-26A-4, ascertainment that the facts set forth in the application for licensure are true and complete, and evidence, which may be determined by inspection by the board, that the applicant meets the requirements of SDCL chapter 34-26A and this chapter. The board may refuse to issue or renew a license if the applicant does not meet the requirements of this section. The applicant may contest the denial pursuant to SDCL chapter 1-26. The most current license issued by the board must be posted on the premises of the crematory in a place conspicuous to the public. The license certificate remains the property of the board.~~ Repealed.

Source: 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:04, 26 SDR 87, effective December 9, 1999.

General Authority: ~~SDCL 34-26A-33.~~

Law Implemented: ~~SDCL 34-26A-4, 34-26A-33.~~

Approved

20:45:05:05. Annual inspection -- Correction of violations. ~~The board shall annually inspect the premises of licensed crematories for compliance with the provisions of SDCL chapter 34-26A and this chapter. The inspection shall take place during business hours and shall be conducted by an authorized board inspector after presentation of identification. The scope of the inspection is limited to those areas provided for in SDCL chapter 34-26A and this chapter. An existing violation must be corrected within 60 days after the board's inspection, unless an extension of time is approved by the board. The crematory may be reinspected by the board to verify correction, with the costs and fees of the reinspection being assessed to and paid by the crematory authority. A crematory shall be open for inspection from the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday. Refusal of inspection is cause for not renewing a crematory license, as well as grounds for revoking a crematory license Repealed.~~

Source: 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:05, 26 SDR 87, effective December 9, 1999; 30 SDR 215, effective July 14, 2004.

General Authority: ~~SDCL 34-26A-33.~~

Law Implemented: ~~SDCL 34-26A-4, 34-26A-33.~~

20:45:05:06. Suspension or revocation of license. ~~Pursuant to~~ In accordance with SDCL chapter 1-26 and SDCL chapter 36-1C, the board may suspend ~~or,~~ revoke, or impose other disciplinary actions against a license issued under SDCL chapter 34-26A on any of the following grounds:

(1) ~~Violation by the crematory authority~~ of the provisions of SDCL chapter 34-26A or this chapter;

(2) Failure to allow board inspections; ~~and~~

(3) Failure to correct violations as outlined by the board inspector in the inspection report in accordance with § 20:45:05:05;

(4) Transferring, assigning, or altering a crematory license;

(5) Failure to remit payment for license;

(6) Failure to annually renew license before December thirty-first;

(7) Failure to post the crematory license in a place conspicuous to the public;

(8) Engaging in any practice or conduct that constitutes a danger to the health, safety, or welfare of the public; or

(9) Failure to maintain adequate safety and sanitary conditions or other requirements of crematories, as set forth in SDCL chapter 34-26A or this chapter.

Source: 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:06, 26 SDR 87, effective December 9, 1999.

General Authority: ~~SDCL 1-26-29, 34-26A-5.1 34-26A-33, 34-26A-34.~~

Law Implemented: ~~SDCL 34-26A-4, 34-26A-5.1, 34-26A-33, 34-26A-34.~~

20:45:05:07. Human remains defined. ~~For purposes of this chapter, human remains are the body or part of a body of a deceased person or part of a body or limb that has been removed from a living person, including the body or body part in any stage of decomposition which is entrusted to a crematory authority by the authorizing agent for the express purpose of cremation as the lawful disposition of the body after the person's death~~ Repealed.

Source: 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:07, 26 SDR 87, effective December 9, 1999.

General Authority: ~~SDCL 34-26A-33.~~

Law Implemented: ~~SDCL 34-26A-33.~~

20:45:05:08. Physicians and medical facilities disposing of human remains required to be licensed. ~~A physician, hospital, ambulatory surgery center, or medical laboratory which cremates human remains other than pathological waste must be licensed as a crematory authority by the board~~ Repealed.

Source: 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:08, 26 SDR 87, effective December 9, 1999.

General Authority: ~~SDCL 34-26A-33.~~

Law Implemented: ~~SDCL 34-26A-5, 34-26A-33.~~

20:45:05:09. Container requirements for accepting pathological waste. ~~A crematory authority may not accept for disposal pathological waste which:~~

~~(1) Is in a container showing evidence of leakage of bodily fluids;~~
~~(2) Does not have a biohazard label securely and conspicuously affixed to the container;~~
~~(3) Is not sealed in either double impervious plastic bags or a single impervious plastic bag resistant to spillage;~~

~~(4) Is not in a container that allows for ease of handling;~~
~~(5) Is not in a container composed of readily combustible materials suitable for cremation;~~

~~or~~

~~(6) Does not provide protection for the health, safety, and personal integrity of the crematory personnel.~~

The biohazard label must contain a notice that reads substantially as follows:

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WARNING

**~~THESE HUMAN REMAINS CONTAIN POTENTIALLY HAZARDOUS
INFECTIOUS AGENTS, USE UNIVERSAL PRECAUTIONS IN
HANDLING.~~**

**~~OBSERVE THE FOLLOWING PRECAUTIONS WHILE IN CONTACT
WITH REMAINS:~~**

~~Wear gloves while handling these remains, particularly if open cuts, abrasions, or other lesions are present on your hands. Exercise caution while in contact with blood or other body fluids and your mucous membrane surfaces, such as your eyes and mouth. Wash hands thoroughly and promptly after contact with body fluids and after direct handling of remains~~
Repealed.

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Source: 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:09, 26 SDR 87, effective December 9, 1999.

General Authority: ~~SDCL 34-26A-33.~~

Law Implemented: ~~SDCL 34-26A-33.~~

Cross-References:

~~Solid waste disposal, SDCL chapter 34A-6;~~

~~Solid waste, art 74:27.~~

20:45:05:10. Occupant protection. ~~A crematory covered by this chapter must be constructed, arranged, equipped, maintained, and operated to avoid injury or danger to occupants and the public. The crematory authority must provide the physical resources, personnel, and technical expertise necessary to meet at least the following requirements:~~

- ~~(1) Maintain the crematory premises in a sanitary condition at all times;~~
- ~~(2) Provide handwashing facilities consisting of hot and cold running water, towel dispenser with single service towels or hand drying device, and hand cleanser in all preparation and holding areas. The facilities must be readily accessible to crematory personnel;~~
- ~~(3) Provide equipment, flooring, and interior finishes in preparation and holding areas which are impervious to liquids and gases and which can be readily disinfected;~~
- ~~(4) Provide outside ventilation by windows or forced air ventilation so arranged that it is not offensive to the public;~~
- ~~(5) Provide access by crematory personnel to a first aid emergency kit and eye wash kit;~~
- ~~(6) Provide formal orientation and ongoing education for all crematory personnel in the practice of infection control and prevention;~~
- ~~(7) Ensure that crematory personnel follow guidelines for universal precautions for the safe handling of human remains and pathological waste in accordance with the recommendations of the Centers for Disease Control, U. S. Public Health Service, as published in "Recommendations for Prevention of HIV Transmission in Health Care Settings," August 21, 1987, Centers for Disease Control and Prevention. Recommendations for Prevention of HIV Transmission in Health Care Settings. MMWR 1987:36 (Supp. No. 2S); #5S-18S; Centers for Disease Control and Prevention. "Update: Universal Precautions for Prevention of Transmission of HIV, HBV, and Other Bloodborne Pathogens in Health Care Settings." MMWR 1988:37; 377-382, 387-8; Centers~~

~~for Disease Control and Prevention (CDC). Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Patients During Exposure-Prone Invasive Procedures. **Morbidity and Mortality Weekly Report** (MMWR) 1991;40 (No. RR-8); #1-9; "Update: Universal Precautions for Prevention of Transmission of Human Immunodeficiency Virus, Hepatitis B Virus, and Other Bloodborne Pathogens in Health-Care Settings," June 24, 1988, and Department of Labor, Occupational Safety and Health Administration. Occupational Exposure to Bloodborne Pathogens; 29 C.F.R. § 1910.1030 (July 1, 1993); and~~

~~(8) Ensure that the funeral director has taken all necessary steps to remove any pacemaker, hazardous implants, or other implants powered by batteries from the human remains prior to delivery.~~ Repealed.

Source: 15 SDR 146, effective April 2, 1989; transferred from 44:21:01:10, 26 SDR 87, effective December 9, 1999.

General Authority: ~~SDCL 34-26A-33.~~

Law Implemented: ~~SDCL 34-26A-3, 34-26A-33.~~

References: ~~"Recommendations for Prevention of HIV Transmission in Health-Care Settings," August 21, 1987, and "Update: Universal Precautions for Prevention of Transmission of Human Immunodeficiency Virus, Hepatitis B Virus, and Other Bloodborne Pathogens in Health-Care Settings," June 24, 1988, **Morbidity and Mortality Weekly Report**, Centers for Disease Control, Public Health Service, U. S. Department of Health and Human Services, Atlanta, Georgia 30333. HHS Publication No. (CDC) 87-8017 and (CDC) 88-8017. Copies may be obtained from South Dakota Department of Health, 615 East 4th Street, Pierre, South Dakota 57501. Cost: Free.~~

Copies of the three Centers for Disease Control and Prevention publications below may be obtained from the Massachusetts Medical Society Publications, CSPO, Box 9120, Waltham, MA 02254. Cost is \$5 each.

1. "Recommendations for Prevention of HIV Transmission in Health Care Settings." **Morbidity and Mortality Weekly Report** (MMWR) 1987;36 (Supp. No. 2S); #5S-18S; Centers for Disease Control and Prevention, Public Health Service, U.S. Department of Health and Human Services, Atlanta, Georgia 30333.

2. "Update: Universal Precautions for Prevention of Transmission of HIV, HBV, and Other Bloodborne Pathogens in Health Care Settings." MMWR 1988;37; 377-382, 387-8; Centers for Disease Control and Prevention, Public Health Service, U.S. Department of Health and Human Services, Atlanta, Georgia 30333.

3. "Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Patients During Exposure-Prone Invasive Procedures." MMWR 1991;40 (No. RR-8); #1-9; Centers for Disease Control and Prevention, Public Health Service, U.S. Department of Health and Human Services, Atlanta, Georgia 30333.

Cross Reference: Fire safety standards, § 20:45:05:15.

20:45:05:11. Refrigeration requirements. A crematory ~~authority operator which~~ operator who is unable to cremate unembalmed human remains immediately upon taking custody of the human remains must provide or maintain an operable refrigeration unit with cleanable, noncorrosive interior and exterior finishes. The unit must be capable of maintaining a temperature of ~~34~~ forty degrees Fahrenheit or below ~~and of holding at least three bodies~~. Human remains that are not embalmed may not be held by the crematory authority for longer than ~~72 hours~~ six days before cremation, except in the event of a coroner's investigation or inquest, or when otherwise ordered by a court of competent jurisdiction. For purposes of this section, the phrase, immediately upon taking custody, means within ~~24~~ twenty-four hours of taking custody.

Source: 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:11, 26 SDR 87, effective December 9, 1999; 30 SDR 215, effective July 14, 2004.

General Authority: SDCL 34-26A-33.

Law Implemented: SDCL 34-26A-4.1(4), 34-26A-33, 34-26A-13.1, 34-26A-14, 34-26A-31.

20:45:05:12. Embalming requirements. ~~In addition to the requirements of § 20:45:05:10, a crematory authority which embalms human remains must provide for a person licensed by the state Board of Funeral Service to perform the embalming in a facility licensed by the state Board of Funeral Service.~~ Repealed.

Source: 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:12, 26 SDR 87, effective December 9, 1999.

General Authority: ~~SDCL 34-26A-33.~~

Law Implemented: ~~SDCL 34-26A-16, 34-26A-33.~~

Cross References: ~~License required to embalm, practice funeral service or maintain establishment, SDCL 36-19-14; Individual and small onsite wastewater systems, ch 74:53:01.~~

20:45:05:13. Construction standards. ~~A crematory authority must shall ensure the meet at least the following crematory construction standards:~~

~~(1) Provide a cremation chamber which is designed and fabricated expressly for the purpose of cremating human remains;~~

~~(2) Install windows and doors in such a way that rooms for preparation, holding, or cremation of human remains are obstructed from view from the outside and that fumes and odors are prevented from entering other parts of the crematory premises; and~~

~~(3) Control cremation chamber emissions in accordance with the rules of the Department of Agriculture and Natural Resources Repealed.~~

Source: 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:13, 26 SDR 87, effective December 9, 1999; SL 2021, ch 1, §§ 8, 19, effective April 19, 2021.

General Authority: ~~SDCL 34-26A-33.~~

Law Implemented: ~~SDCL 34-26A-3, 34-26A-33.~~

Cross Reference:

~~Emission restrictions for incinerators, § 74:36:06:04.~~

20:45:05:14. Notice of construction or alteration of crematories. ~~The board must be notified at least 30 days prior to initiating construction of new crematories or permanent additions, alterations, or modification of existing crematories. A crematory must be constructed so as to comply with SDCL chapter 34-26A as well as conform to all local building codes and environmental standards~~ Repealed.

Source: 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:14, 26 SDR 87, effective December 9, 1999; 30 SDR 215, effective July 14, 2004.

General Authority: ~~SDCL 34-26A-33.~~

Law Implemented: ~~SDCL 34-26A-33.~~

Cross Reference: ~~Operating permit or permit revision required, § 74:36:04:02.~~

20:45:05:15. Fire safety standards. A crematory must ~~meet applicable fire safety standards in the 1988 NFPA 101, "Life Safety Code," and NFPA 82 1983, "Standard on Incinerators, Waste and Linen Handling Systems and Equipment."~~ be maintained in good condition according to the specifications given by the manufacturer of the equipment. No flammable material may be stored within five feet of the cremation chamber. In addition, the crematory must have:

- (1) A floor made of concrete which is not covered in flammable material;
- (2) Walls and a ceiling which are fireproof or constructed to be fire retardant;
- (3) An adequate supply of air for combustion and ventilation to enter the incinerator room;
- (4) Adequate entrances and exits to ensure protection for the public and crematory personnel;
and
- (5) A portable fire extinguisher with a minimum of a 2A rating.

Source: 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:15, 26 SDR 87, effective December 9, 1999.

General Authority: SDCL 34-26A-33.

Law Implemented: SDCL ~~34-26A-3~~, 34-26A-33.

References:

— ~~NFPA 101, "Life Safety Code 1988," National Fire Protection Association. Copies may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. Cost: \$46.75.~~

— ~~NFPA 82 1983, "Standard on Incinerators, Waste and Linen Handling Systems and Equipment," National Fire Protection Association. Copies may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. Cost: \$19.50.~~

20:45:05:16. Fire safety requirements for crematories attached to funeral establishments. A crematory ~~which~~ that is a part of a funeral establishment or is physically attached to a funeral establishment must be separated from the funeral establishment by construction using noncombustible materials with a fire resistance rating of no less than two hours. As an alternative to a two-hour fire separation, an automatic sprinkler system may be installed in the funeral establishment and a one-hour fire separation constructed between the funeral establishment and the crematory.

Source: 15 SDR 146, effective April 2, 1989; transferred from § 44:21:01:16, 26 SDR 87, effective December 9, 1999.

General Authority: SDCL 34-26A-33.

Law Implemented: SDCL ~~34-26A-3~~, 34-26A-33.