HOUSE BILL 2081

AN ACT

AMENDING SECTIONS 32-1301 AND 32-1398, ARIZONA REVISED STATUTES; RELATING TO FUNERAL INDUSTRY PROFESSIONALS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 32-1301, Arizona Revised Statutes, is amended to read:

32-1301. Definitions
In this chapter, unless the context otherwise requires:
1. "Accredited" means being recognized or authorized by the American board of funeral service education.
2. "Administrative costs and expenses" means the cost of copies, transcripts, court reporter and witness fees, reimbursement for mileage and office of administrative hearings costs.
3. "Alkaline hydrolysis" means a form of final disposition that includes all of the following:
   (a) Reducing a dead human body to essential elements through a water-based dissolution process using alkaline chemicals, heat, agitation and pressure to accelerate natural decomposition.
   (b) Processing the hydrolyzed remains after they are removed from the alkaline hydrolysis vessel.
   (c) Placing the processed remains in a hydrolyzed remains container.
   (d) Releasing the hydrolyzed remains to an appropriate party.
4. "Alkaline hydrolysis container":
   (a) Means a hydrolyzable or biodegradable closed container or pouch that is resistant to leakage of bodily fluids, that encases a dead human body and into which the body is placed before the container's insertion into an alkaline hydrolysis vessel.
   (b) Includes a hydrolyzable or biodegradable alternative container or casket.
5. "Alkaline hydrolysis facility" means a building or structure containing one or more alkaline hydrolysis vessels for alkaline hydrolysis.
6. "Alkaline hydrolysis operator" means a person who is trained to carry out the process of alkaline hydrolysis.
7. "Alkaline hydrolysis vessel" means the container in which alkaline hydrolysis is performed.
8. "Alternative container" means any unfinished wood box or other nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining, that is designed for encasing human remains.
9. "Authorizing agent" means a person who is legally entitled to order the cremation, disinterment or embalming of human remains pursuant to section 32-1365.02.
10. "Beneficiary" means a person whose future funeral arrangements will be handled by a funeral establishment pursuant to a prearranged funeral agreement.
11. "Business entity" includes any corporation, association, limited liability company, professional corporation, partnership, limited partnership, sole proprietorship, business trust, trust, joint venture and other business entity.

12. "Casket" means a rigid container that is designed to permanently encase human remains and that is usually constructed of wood, metal or synthetic substances and ornamented and lined with fabric.

13. "Change of ownership" means a transfer of a controlling legal or equitable interest in a licensed funeral establishment or crematory resulting from a sale or merger. If the establishment or crematory is operated by a business entity, any transfer of the ownership of ten percent or more of the entity constitutes a change of ownership.

14. "Conviction" means a criminal adjudication or conviction by any state or federal court of competent jurisdiction, including a judgment based on a no contest plea, without regard to whether civil rights have been restored.

15. "Cremated remains" means the remaining bone fragments or soil after cremation.

16. "Cremation" means the heating process that reduces human remains to bone fragments or soil by combustion, and evaporation or natural organic reduction.

17. "Cremation container" means a leak and spill resistant, rigid, combustible, closed receptacle into which human remains are placed before cremation.

18. "Cremationist" means a person who operates a crematory retort, who performs the actual cremation of human remains and who may be licensed pursuant to article 6 of this chapter.

19. "Crematory" means a building or portion of a building that is licensed pursuant to article 6 of this chapter and that houses a retort in which only human remains are cremated.

20. "Department" means the department of health services.

21. "Director" means the director of the department.

22. "Disciplinary action" means an action taken to revoke or suspend a license, to impose probationary requirements or civil penalties or to issue a letter of censure or reprimand to any person who is subject to this chapter and who violates any provision of this chapter or rules.

23. "Embalmer" means a person who is licensed pursuant to this chapter and who is engaged in embalming.

24. "Embalming" means the implementation of reconstructive procedures and the process of disinfecting and preserving a dead human body to retard organic decomposition by treating the body to reduce the presence and growth of organisms.

25. "Financial institution" means a bank, savings and loan association, trust company or credit union that is lawfully doing business in this state and that is not affiliated with a funeral establishment.
26. "Fixed price prearranged funeral agreement funded by trust" means any agreement or combination of agreements that establishes a fixed price for funeral goods and services, that requires a funeral establishment to provide those funeral goods and services at the price levels in effect at the time of the execution of the agreement and that requires the purchaser to convey all or a portion of the accrued interest to the funeral establishment at the time that the funeral goods and services are actually provided.

27. "Funded by insurance" means that monies for a prearranged funeral agreement are paid directly to an insurance company licensed pursuant to title 20 on behalf of the beneficiary of the agreement.

28. "Funeral directing" means arranging, directing or providing a service in the disposition of dead human bodies for compensation.

29. "Funeral director" means a person who is licensed pursuant to this chapter and who is engaged in funeral directing.

30. "Funeral establishment" means a business at a specific location that is licensed pursuant to this chapter and that is devoted to the care, storage or preparation for final disposition or transportation of dead human bodies.

31. "Funeral goods and services":
   (a) Means any personal property or services that are typically sold or provided in connection with the final disposition of human remains, including caskets, alternative containers, outer burial containers, cremation containers, transportation containers, funeral clothing or accessories, monuments, grave markers, urns, embalming services, funeral directing services and similar funeral or burial items.
   (b) Does not include:
   (i) Goods and services sold by cemeteries.
   (ii) Services provided pursuant to a transportation protection agreement.

32. "Holding facility" means a designated area for retaining human remains.

33. "Human remains" means a lifeless human body or parts of a human body that allow a reasonable inference that death occurred.

34. "License" means a written authorization that is issued by the department and that entitles a person to act as a funeral director or embalmer or to operate a funeral establishment, crematory or alkaline hydrolysis facility in this state.

35. "Licensee" means a person to whom the department has issued a license under this chapter.

36. "Manage" means:
   (a) That a responsible funeral director exercises control and oversight over all employees of a funeral establishment and over funeral transactions, including caring for dead human bodies, funeral services and activities and documenting and retaining records.
(b) That a responsible cremationist exercises control and oversight over all employees of a crematory and crematory operations.

37. “National board examination” means the test or tests given by the international conference of funeral service examining boards to determine the entry level knowledge and skills of a person regarding funeral directing and embalming.

38. “NATURAL ORGANIC REDUCTION” MEANS THE CONTAINED, ACCELERATED CONVERSION OF HUMAN REMAINS TO SOIL.

39. “Net interest” means interest earned on a prearranged funeral trust account minus applicable taxes, reasonable and necessary charges made by the financial institution and the annual service fee allowed to be deducted by the funeral establishment according to section 32-1391.06, subsection B.

40. “Outer burial container” means a container that is designed for placement in a grave around a casket, including burial vaults, grave boxes and grave liners.

41. "Owner":
   (a) Means a person who owns ten percent or more of a business entity.
   (b) Does not include shareholders of companies who have a class of common equity stock listed or authorized to be listed on the New York stock exchange or the American stock exchange or listed on the NASDAQ stock market.

42. "Person legally responsible" means the person responsible for burying a dead body as determined in section 36-831.

43. "Prearranged funeral agreement" means any agreement or combination of agreements under which a payment is made before the death of the intended beneficiary for funeral goods and services to be delivered or performed after the death of the beneficiary.

44. "Prearranged funeral trust account" means a trust account that is established at a financial institution and into which all monies paid on behalf of a beneficiary pursuant to a prearranged funeral agreement are deposited.

45. "Preparation" means washing, shaving, dressing or arranging hair on, applying cosmetics to or positioning bodily features on a dead human body and placing the dead human body in a casket.

46. "Processed cremated remains" means cremated remains, including after they are pulverized and cleaned, leaving primarily small bone fragments OR SOIL.

47. "Provisionally accredited" means being granted candidacy status by the American board of funeral service education.

48. "Responsible cremationist" means a licensed cremationist who manages a crematory.
48. "Responsible funeral director" means a person who is licensed pursuant to this chapter, who is engaged in funeral directing and who manages and is accountable for a funeral establishment.

49. "Retort" means an enclosed space within which cremation takes place.

50. "Supervise" or "supervision" means that a licensed embalmer has responsibility for and is within sight and sound of a person who is embalming a dead human body or assisting in embalming a dead human body.

51. "Temporary container" means a receptacle that is usually made of cardboard, rigid plastic or another similar material and that is designed to hold processed cremated remains until they are placed in an urn or another permanent container.

52. "Transportation protection agreement" means an agreement that primarily provides or arranges for services that are related to preparing human remains or cremated remains for the purpose of transportation and such subsequent transportation.

53. "Trust funds" means all monies that are deposited on behalf of a beneficiary of a prearranged funeral agreement funded by trust and all accrued net interest. Trust funds shall be considered an account kept in suspense until distributed to the beneficiary, the funeral establishment or the estate of the beneficiary in accordance with this article.

54. "Universal precautions" means the universal blood and fluid precautions recommended by the centers for disease control of the United States public health service to prevent the transmission of bloodborne and bodily fluid-borne infectious diseases.

55. "Unprofessional conduct" includes the following acts, whether occurring in this state or elsewhere:
   (a) Committing a class 1 or 2 felony.
   (b) Committing a felony or misdemeanor if the offense has a reasonable relationship to funeral directing or embalming. Conviction by any court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
   (c) Providing false, misleading or deceptive information on an application for licensure pursuant to this chapter or on an examination required for licensure.
   (d) Bribing or offering to bribe, directly or indirectly, an employee of the department to influence the employee's duties.
   (e) Wilfully interfering with an embalmer, funeral director or cremationist who has lawful custody of a dead human body in performing the embalmer's, funeral director's or cremationist's duty to embalm or prepare the body for burial, transportation or cremation.
(f) Paying or causing monies or other valuable consideration to be paid to a person, other than an employee of a funeral establishment, to secure business regulated pursuant to this chapter from or through the person.

(g) Violating any law of this state or any rule adopted by the department that relates to embalming or preparing dead human bodies.

(h) Certifying falsely to having embalmed or prepared a dead human body that was embalmed by another person.

(i) Falsely advertising or labeling any service or merchandise with the intention of deceiving the public.

(j) Shipping or delivering any merchandise or supplies that are not the substantial equivalent of or superior in quality to merchandise or supplies previously presented to the purchaser as samples.

(k) Committing any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence or incompetence if the act has a reasonable relationship to funeral directing or embalming.

(l) Engaging in any conduct or practice that is reasonably related to funeral directing or embalming and that is or may be harmful or dangerous to the health, safety or welfare of the public.

(m) Within a period of five years, having a license or endorsement suspended or revoked by the department or by the funeral services regulating authority of this state or any other jurisdiction or surrendering a license or endorsement in lieu of disciplinary action.

56. 57. "Urn" means a receptacle into which processed cremated remains are placed for disposition.

Sec. 2. Section 32-1398, Arizona Revised Statutes, is amended to read:

32-1398. Crematories; prohibited acts; disciplinary actions
A. The department may take disciplinary action against a crematory or an agent or employee of a crematory for any of the following acts:
1. Unless otherwise allowed by law, selling or offering to sell a cremation that is not arranged by a funeral establishment licensed pursuant to article 4 of this chapter. This paragraph does not prohibit charging a cremation fee.

2. Unless otherwise permitted ALLOWED by law, selling or offering to sell any funeral goods and services other than cremation.

3. Cremating or causing the cremation of a dead human body before obtaining certification from the county medical examiner or person performing the duties of the county medical examiner pursuant to section 11-599 and, if the deceased person did not execute a document authorizing the deceased person's cremation pursuant to section 32-1365.01, before obtaining express written consent to cremate the body from the authorizing agent pursuant to section 32-1365.02.
4. Using a retort for any purpose other than the cremation of human remains.
5. Cremating more than one dead human body at the same time in the same retort without the express written consent of the authorizing agents.
6. Introducing a second dead human body into a retort before reasonable efforts have been made to remove all BONE fragments OR SOIL of the cremated remains from the preceding cremation without the express written consent of the authorizing agents. Incidental and unavoidable residue remaining in a retort after a cremation does not constitute a violation of this paragraph.
7. Introducing the cremated human remains of a second dead human body into a processor before the termination of the processing of the cremated human remains that were previously in the processor and before reasonable efforts have been made to remove all BONE fragments OR SOIL of cremated remains from the preceding processing without the express written consent of the authorizing agents. Incidental and unavoidable residue remaining in a processor after a processing does not constitute a violation of this paragraph.
8. Retaining any accumulated human residue from any retort, processor, container or other equipment used in cremation. A crematory shall dispose of all accumulated human residue in a cemetery in accordance with the rules of the cemetery and any applicable local ordinances.
9. Selling or offering for sale anything of value obtained as a result of the cremation process.
10. Violating this chapter or a rule adopted pursuant to this chapter.
11. The acts or omissions of an agent or employee of a crematory that violate this chapter or rules adopted pursuant to this chapter are deemed to be acts or omissions of the crematory.