



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB4548

Introduced 02/03/04, by Thomas Holbrook

SYNOPSIS AS INTRODUCED:

225 ILCS 41/15-75
410 ILCS 50/3.2
755 ILCS 45/4-7

from Ch. 111 1/2, par. 5403.2
from Ch. 110 1/2, par. 804-7

Amends the Funeral Directors and Embalmers Licensing Code. Provides that it is grounds for discipline for any funeral director or embalmer to fail to comply with a power of attorney for health care. Amends the Medical Patient Rights Act. Provides that a patient who is incapacitated or unable to communicate, may authorize visitors by executing a letter, form, or other document. Amends the Illinois Power of Attorney Act. Provides that any person licensed under the Funeral Directors and Embalmers Licensing Code must comply with a power of attorney for health care.

LRB093 17022 LCB 42686 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning rights and remedies.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Funeral Directors and Embalmers Licensing
5 Code is amended by changing Section 15-75 as follows:

6 (225 ILCS 41/15-75)

7 (Section scheduled to be repealed on January 1, 2013)

8 Sec. 15-75. Violations; grounds for discipline; penalties.

9 (a) Each of the following acts is a Class A misdemeanor for
10 the first offense, and a Class 4 felony for each subsequent
11 offense. These penalties shall also apply to unlicensed owners
12 of funeral homes.

13 (1) Practicing the profession of funeral directing and
14 embalming or funeral directing, or attempting to practice
15 the profession of funeral directing and embalming or
16 funeral directing without a license as a licensed funeral
17 director and embalmer or funeral director.

18 (2) Serving as an intern under a licensed funeral
19 director and embalmer or attempting to serve as an intern
20 under a licensed funeral director and embalmer without a
21 license as a licensed funeral director and embalmer intern.

22 (3) Obtaining or attempting to obtain a license,
23 practice or business, or any other thing of value, by fraud
24 or misrepresentation.

25 (4) Permitting any person in one's employ, under one's
26 control or in or under one's service to serve as a funeral
27 director and embalmer, funeral director, or funeral
28 director and embalmer intern when the person does not have
29 the appropriate license.

30 (5) Failing to display a license as required by this
31 Code.

32 (6) Giving false information or making a false oath or

1 affidavit required by this Code.

2 (b) Each of the following acts or actions is a violation of
3 this Code for which the Department may refuse to issue or
4 renew, or may suspend or revoke any license or may take any
5 disciplinary action as the Department may deem proper including
6 fines not to exceed \$1,000 for each violation.

7 (1) Obtaining or attempting to obtain a license by
8 fraud or misrepresentation.

9 (2) Conviction in this State or another state of any
10 crime that is a felony or misdemeanor under the laws of
11 this State or conviction of a felony or misdemeanor in a
12 federal court.

13 (3) Violation of the laws of this State relating to the
14 funeral, burial or disposal of deceased human bodies or of
15 the rules and regulations of the Department, or the
16 Department of Public Health.

17 (4) Directly or indirectly paying or causing to be paid
18 any sum of money or other valuable consideration for the
19 securing of business or for obtaining authority to dispose
20 of any deceased human body.

21 (5) Incompetence or untrustworthiness in the practice
22 of funeral directing and embalming or funeral directing.

23 (6) False or misleading advertising as a funeral
24 director and embalmer or funeral director, or advertising
25 or using the name of a person other than the holder of a
26 license in connection with any service being rendered in
27 the practice of funeral directing and embalming or funeral
28 directing. Nothing in this paragraph shall prevent
29 including the name of any owner, officer or corporate
30 director of a funeral business who is not a licensee in any
31 advertisement used by a funeral home with which the
32 individual is affiliated if the advertisement specifies
33 the individual's affiliation with the funeral home.

34 (7) Engaging in, promoting, selling, or issuing burial
35 contracts, burial certificates, or burial insurance
36 policies in connection with the profession as a funeral

1 director and embalmer, funeral director, or funeral
2 director and embalmer intern in violation of any laws of
3 the State of Illinois.

4 (8) Refusing, without cause, to surrender the custody
5 of a deceased human body upon the proper request of the
6 person or persons lawfully entitled to the custody of the
7 body.

8 (9) Taking undue advantage of a client or clients as to
9 amount to the perpetration of fraud.

10 (10) Engaging in funeral directing and embalming or
11 funeral directing without a license.

12 (11) Encouraging, requesting, or suggesting by a
13 licensee or some person working on his behalf and with his
14 consent for compensation that a person utilize the services
15 of a certain funeral director and embalmer, funeral
16 director, or funeral establishment unless that information
17 has been expressly requested by the person. This does not
18 prohibit general advertising or pre-need solicitation.

19 (12) Making or causing to be made any false or
20 misleading statements about the laws concerning the
21 disposal of human remains, including, but not limited to,
22 the need to embalm, the need for a casket for cremation or
23 the need for an outer burial container.

24 (13) Continued practice by a person having an
25 infectious or contagious disease.

26 (14) Embalming or attempting to embalm a deceased human
27 body without express prior authorization of the person
28 responsible for making the funeral arrangements for the
29 body. This does not apply to cases where embalming is
30 directed by local authorities who have jurisdiction or when
31 embalming is required by State or local law.

32 (15) Making a false statement on a Certificate of Death
33 where the person making the statement knew or should have
34 known that the statement was false.

35 (16) Soliciting human bodies after death or while death
36 is imminent.

1 (17) Performing any act or practice that is a violation
2 of this Code, the rules for the administration of this
3 Code, or any federal, State or local laws, rules, or
4 regulations governing the practice of funeral directing or
5 embalming.

6 (18) Performing any act or practice that is a violation
7 of Section 2 of the Consumer Fraud and Deceptive Business
8 Practices Act.

9 (19) Engaging in unethical or unprofessional conduct
10 of a character likely to deceive, defraud or harm the
11 public.

12 (20) Taking possession of a dead human body without
13 having first obtained express permission from next of kin
14 or a public agency legally authorized to direct, control or
15 permit the removal of deceased human bodies.

16 (21) Advertising in a false or misleading manner or
17 advertising using the name of an unlicensed person in
18 connection with any service being rendered in the practice
19 of funeral directing or funeral directing and embalming.
20 The use of any name of an unlicensed or unregistered person
21 in an advertisement so as to imply that the person will
22 perform services is considered misleading advertising.
23 Nothing in this paragraph shall prevent including the name
24 of any owner, officer or corporate director of a funeral
25 home, who is not a licensee, in any advertisement used by a
26 funeral home with which the individual is affiliated, if
27 the advertisement specifies the individual's affiliation
28 with the funeral home.

29 (22) Directly or indirectly receiving compensation for
30 any professional services not actually performed.

31 (23) Failing to account for or remit any monies,
32 documents, or personal property that belongs to others that
33 comes into a licensee's possession.

34 (24) Treating any person differently to his detriment
35 because of race, color, creed, gender, religion, or
36 national origin.

1 (25) Knowingly making any false statements, oral or
2 otherwise, of a character likely to influence, persuade or
3 induce others in the course of performing professional
4 services or activities.

5 (26) Knowingly making or filing false records or
6 reports in the practice of funeral directing and embalming.

7 (27) Failing to acquire continuing education required
8 under this Code.

9 (28) Failing to comply with any of the following
10 required activities:

11 (A) When reasonably possible, a licensee or anyone
12 acting on his or her behalf shall obtain the express
13 authorization of the person or persons responsible for
14 making the funeral arrangements for a deceased human
15 body prior to removing a body from the place of death
16 or any place it may be or embalming or attempting to
17 embalm a deceased human body, unless required by State
18 or local law. This requirement is waived whenever
19 removal or embalming is directed by local authorities
20 who have jurisdiction. If the responsibility for the
21 handling of the remains lawfully falls under the
22 jurisdiction of a public agency, then the regulations
23 of the public agency shall prevail.

24 (B) A licensee shall clearly mark the price of any
25 casket offered for sale or the price of any service
26 using the casket on or in the casket if the casket is
27 displayed at the funeral establishment. If the casket
28 is displayed at any other location, regardless of
29 whether the licensee is in control of that location,
30 the casket shall be clearly marked and the registrant
31 shall use books, catalogues, brochures, or other
32 printed display aids to show the price of each casket
33 or service.

34 (C) At the time funeral arrangements are made and
35 prior to rendering the funeral services, a licensee
36 shall furnish a written statement to be retained by the

1 person or persons making the funeral arrangements,
2 signed by both parties, that shall contain: (i) the
3 name, address and telephone number of the funeral
4 establishment and the date on which the arrangements
5 were made; (ii) the price of the service selected and
6 the services and merchandise included for that price;
7 (iii) a clear disclosure that the person or persons
8 making the arrangement may decline and receive credit
9 for any service or merchandise not desired and not
10 required by law or the funeral director or the funeral
11 director and embalmer; (iv) the supplemental items of
12 service and merchandise requested and the price of each
13 item; (v) the terms or method of payment agreed upon;
14 and (vi) a statement as to any monetary advances made
15 by the registrant on behalf of the family.

16 (29) A finding by the Department that the license,
17 after having his or her license placed on probationary
18 status or subjected to conditions or restrictions,
19 violated the terms of the probation or failed to comply
20 with such terms or conditions.

21 (30) Violation of any final administrative action of
22 the Director.

23 (31) Being named as a perpetrator in an indicated
24 report by the Department of Children and Family Services
25 pursuant to the Abused and Neglected Child Reporting Act
26 and, upon proof by clear and convincing evidence, being
27 found to have caused a child to be an abused child or
28 neglected child as defined in the Abused and Neglected
29 Child Reporting Act.

30 (32) Failing to comply with the direction of a health
31 care agent under the Powers of Attorney for Health Care
32 Law.

33 (c) The Department may refuse to issue or renew, or may
34 suspend, the license of any person who fails to file a return,
35 to pay the tax, penalty or interest shown in a filed return, or
36 to pay any final assessment of tax, penalty or interest as

1 required by any tax Act administered by the Illinois Department
2 of Revenue, until the time as the requirements of the tax Act
3 are satisfied.

4 (Source: P.A. 93-268, eff. 1-1-04.)

5 Section 10. The Medical Patient Rights Act is amended by
6 changing Section 3.2 as follows:

7 (410 ILCS 50/3.2) (from Ch. 111 1/2, par. 5403.2)

8 Sec. 3.2. (a) Every health care facility in this State
9 shall permit visitation by any person or persons designated,
10 either verbally or, if the patient is incapacitated or unable
11 to communicate, in a letter, form, or other document, by a
12 patient who is 18 years of age or older and who is allowed
13 rights of visitation unless (1) the facility does not allow any
14 visitation for a patient or patients, or (2) the facility or
15 the patient's physician determines that visitation would
16 endanger the physical health or safety of a patient or visitor,
17 or would interfere with the operations of the facility. Nothing
18 in this Act shall restrict the ability of a health care
19 facility to regulate the hours of visitation, the number of
20 visitors per patient or the movement of visitors within the
21 facility.

22 (b) Nothing in this Section shall be construed to further
23 limit or restrict the right of visitation provided by other
24 provisions of law.

25 (c) For the purposes of this Section a "health care
26 facility" does not include a developmental disability
27 facility, a mental health facility or a mental health center.

28 (Source: P.A. 87-651.)

29 Section 15. The Illinois Power of Attorney Act is amended
30 by changing Section 4-7 as follows:

31 (755 ILCS 45/4-7) (from Ch. 110 1/2, par. 804-7)

32 Sec. 4-7. Duties of health care providers and others in

1 relation to health care agencies. Each health care provider and
2 each other person with whom an agent deals under a health care
3 agency shall be subject to the following duties and
4 responsibilities:

5 (a) It is the responsibility of the agent or patient to
6 notify the health care provider, including any person licensed
7 under the Funeral Directors and Embalmers Licensing Code, of
8 the existence of the health care agency and any amendment or
9 revocation thereof. A health care provider furnished with a
10 copy of a health care agency shall make it a part of the
11 patient's medical records and shall enter in the records any
12 change in or termination of the health care agency by the
13 principal that becomes known to the provider. Whenever a
14 provider believes a patient may lack capacity to give informed
15 consent to health care which the provider deems necessary, the
16 provider shall consult with any available health care agent
17 known to the provider who then has power to act for the patient
18 under a health care agency.

19 (b) A health care decision made by an agent in accordance
20 with the terms of a health care agency shall be complied with
21 by every health care provider to whom the decision is
22 communicated, subject to the provider's right to administer
23 treatment for the patient's comfort care or alleviation of
24 pain; but if the provider is unwilling to comply with the
25 agent's decision, the provider shall promptly inform the agent
26 who shall then be responsible to make the necessary
27 arrangements for the transfer of the patient to another
28 provider. It is understood that a provider who is unwilling to
29 comply with the agent's decision will continue to afford
30 reasonably necessary consultation and care in connection with
31 the transfer.

32 (c) At the patient's expense and subject to reasonable
33 rules of the health care provider to prevent disruption of the
34 patient's health care, each health care provider shall give an
35 agent authorized to receive such information under a health
36 care agency the same right the principal has to examine and

1 copy any part or all of the patient's medical records that the
2 agent deems relevant to the exercise of the agent's powers,
3 whether the records relate to mental health or any other
4 medical condition and whether they are in the possession of or
5 maintained by any physician, psychiatrist, psychologist,
6 therapist, hospital, nursing home or other health care
7 provider.

8 (d) If and to the extent a health care agency empowers the
9 agent to (1) make an anatomical gift on behalf of the principal
10 under the Uniform Anatomical Gift Act, as now or hereafter
11 amended, or (2) authorize an autopsy of the principal's body
12 pursuant to Section 2 of "An Act in relation to autopsy of dead
13 bodies", approved August 13, 1965, as now or hereafter amended,
14 or (3) direct the disposition of the principal's remains, the
15 decision by an authorized agent as to anatomical gift, autopsy
16 approval or remains disposition shall be deemed the act of the
17 principal and shall control over the decision of other persons
18 who might otherwise have priority; and each person to whom a
19 direction by the agent in accordance with the terms of the
20 agency is communicated, including any person licensed under the
21 Funeral Directors and Embalmers Licensing Code, shall comply
22 with such direction.

23 (Source: P.A. 86-736.)