

2017

STATE OF NEBRASKA

STATUTES RELATING TO:

- 1. FUNERAL DIRECTING AND EMBALMING PRACTICE ACT**
- 2. CREMATION OF HUMAN REMAINS ACT**
- 3. DRUGS AND NARCOTICS (Embalming Fluids)**
- 4. RIGHT OF DISPOSITION OF REMAINS AND FUNERAL ARRANGEMENTS**
- 5. DEAD HUMAN BODIES (Criminal Act-Human skeletal remains or burial goods)**



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INDEX

FUNERAL DIRECTING AND EMBALMING PRACTICE ACT

- 38-1401. Act, how cited.
- 38-1402. Definitions, where found.
- 38-1403. Accredited school of mortuary science, defined.
- 38-1404. Apprentice, defined.
- 38-1405. Board, defined.
- 38-1406. Branch establishment, defined.
- 38-1407. Casket, defined.
- 38-1408. Crematory authority, defined.
- 38-1409. Embalming, defined.
- 38-1410. Funeral directing, defined.
- 38-1411. Funeral establishment, defined.
- 38-1412. Licensure examination, defined.
- 38-1413. Supervision, defined.
- 38-1414. Funeral directing and embalming; license; requirements.
- 38-1415. Examinations; requirements.
- 38-1416. Apprenticeship; apprentice license; examination.
- 38-1417. Teaching and demonstration; use of dead human bodies.
- 38-1418. Violations; evidence.
- 38-1419. Funeral establishment; qualifications; relocation; change of manager; change of name.
- 38-1420. Branch establishment; application for license; qualifications; relocation; change of manager; change of name.
- 38-1421. Reciprocity; military spouse; temporary license.
- 38-1422. Fees.
- 38-1423. Prohibited acts.
- 38-1424. Funeral directors and embalmers and funeral establishments; prohibited acts; section, how construed.
- 38-1425. Deceased persons; funeral and disposition arrangements; liability.
- 38-1426. Final disposition; instructions; remains of deceased person; disposition; liability.
- 38-1427. Autopsy; written authorization; removal of organs; when performed.
- 38-1428. Funeral director and embalmer; principal services; statement of costs.

PRACTICE OF EMBALMING

- 71-194 to 71-196. Transferred to sections 71-1301 to 71-1303.
- 71-197. Repealed. Laws 1980, LB 94, §19.
- 71-198 to 71-1,100. Transferred to sections 71-1304 to 71-1306.
- 71-1,101. Repealed. Laws 1993, LB 187, §39.

PRACTICE OF FUNERAL DIRECTING AND EMBALMING

- 71-1301. Transferred to section 38-1402.
- 71-1302. Transferred to section 38-1414.
- 71-1303. Transferred to section 38-1415.
- 71-1304. Transferred to section 38-1416.
- 71-1305. Transferred to section 38-1417.
- 71-1306. Transferred to section 38-1418.
- 71-1307 to 71-1324. Repealed. Laws 1957, c. 295, §15.
- 71-1325. Repealed. Laws 1993, LB 187, §39.
- 71-1326. Repealed. Laws 2007, LB 463, § 1319.
- 71-1327. Transferred to section 38-1419.
- 71-1327.01. Transferred to section 38-1420.
- 71-1328. Repealed. Laws 1993, LB 187, §39.
- 71-1329. Repealed. Laws 2007, LB 463, § 1319.
- 71-1330. Repealed. Laws 1993, LB 187, §39.
- 71-1331. Transferred to section 38-1423.
- 71-1332. Repealed. Laws 2007, LB 463, § 1319.
- 71-1333. Transferred to section 38-1424.
- 71-1333.01. Repealed. Laws 2007, LB 463, § 1319.

- 71-1333.02. Repealed. Laws 2007, LB 463, § 1319.
- 71-1333.03. Repealed. Laws 2007, LB 463, § 1319.
- 71-1334 and 71-1335. Repealed. Laws 1988, LB 1100, §185.
- 71-1336. Repealed. Laws 2003, LB 242, s. 154.
- 71-1337 and 71-1338. Repealed. Laws 1991, LB 10, §7.
- 71-1339. Transferred to section 38-1425.
- 71-1340. Transferred to section 38-1426.
- 71-1341. Transferred to section 38-1427.
- 71-1342 to 71-1344. Repealed. Laws 1986, LB 643, §25.
- 71-1345. Repealed. Laws 2007, LB 463, § 1319.
- 71-1346. Transferred to section 38-1428.
- 71-1347. Repealed. Laws 2002, LB 1021, §111.
- 71-1348. Repealed. Laws 1993, LB 187, §39.
- 71-1349 to 71-1353. Repealed. Laws 2002, LB 1021, §111.
- 71-1354. Repealed. Laws 2007, LB 463, § 1319.

CREMATION OF HUMAN REMAINS ACT

- 71-1355. Act, how cited.
- 71-1356. Terms, defined.
- 71-1357. Crematory; license required.
- 71-1358. Crematory; building and location requirements.
- 71-1359. License; application; requirements; fee.
- 71-1360. License; expiration.
- 71-1361. Crematory; change in location, ownership, or name; application; requirements; fee.
- 71-1362. Provisional license.
- 71-1363. Licensure; fees.
- 71-1364. Department; inspection; report; duties; noncompliance; procedure.
- 71-1365. Complaints; department; duties; confidentiality; immunity.
- 71-1366. Imminent danger; department; powers.
- 71-1367. Deny or refuse to renew license; disciplinary action; grounds.
- 71-1368. Disciplinary actions; fine; disposition.
- 71-1369. Appeal.
- 71-1370. License; reinstatement or relicensure.
- 71-1371. Nuisance; abatement; acts prohibited; penalty.
- 71-1372. Injunction; authorized.
- 71-1373. Cremation; right to authorize.
- 71-1374. Crematory authority; delivery receipt form; duties.
- 71-1375. Crematory operation; limitations.
- 71-1376. Crematory authority; operation; requirements.
- 71-1377. Cremation authorization form; required; contents.
- 71-1378. Cremation authorization form; signature.
- 71-1379. Potentially hazardous implant or condition; jewelry or other valuables; requirements.
- 71-1380. Dispute; crematory authority or funeral establishment; powers and duties.
- 71-1381. Cremated remains; how treated.
- 71-1382. Cremated remains; final disposition.
- 71-1383. Rules and regulations.
- 71-1384. Crematory authority; bylaws.
- 71-1385. Act; how construed.

DRUGS AND NARCOTICS

- 28-2510.01. Embalming fluids; use of arsenic or strychnine prohibited; label required; violation; penalty.

RIGHT OF DISPOSITION OF REMAINS AND FUNERAL ARRANGEMENTS

- 30-2223. Right of disposition of remains and funeral arrangements; powers and duties; petition filed with court; considerations; court order.

DEAD HUMAN BODIES

- 28-1301. Human skeletal remains or burial goods; prohibited acts; penalty.

STATUTES PERTAINING TO THE PRACTICE OF EMBALMING

- 71-194 to 71-196. **Transferred** to sections 71-1301 to 71-1303.
- 71-197. **Repealed.** Laws 1980, LB 94, §19.
- 71-198 to 71-1,100. **Transferred** to sections 71-1304 to 71-1306.
- 71-1,101. **Repealed.** Laws 1993, LB 187, §39.

STATUTES PERTAINING TO THE PRACTICE OF FUNERAL DIRECTING AND EMBALMING

- 71-1301. **Transferred** to section 38-1402.
- 71-1302. **Transferred** to section 38-1414.
- 71-1303. **Transferred** to section 38-1415.
- 71-1304. **Transferred** to section 38-1416.
- 71-1305. **Transferred** to section 38-1417.
- 71-1306. **Transferred** to section 38-1418.
- 71-1307 to 71-1324. **Repealed.** Laws 1957, c. 295, §15.
- 71-1325. **Repealed.** Laws 1993, LB 187, §39.
- 71-1326. **Repealed.** Laws 2007, LB 463, § 1319.
- 71-1327. **Transferred** to section 38-1419.
- 71-1327.01. **Transferred** to section 38-1420.
- 71-1328. **Repealed.** Laws 1993, LB 187, §39.
- 71-1329. **Repealed.** Laws 2007, LB 463, § 1319.
- 71-1330. **Repealed.** Laws 1993, LB 187, §39.
- 71-1331. **Transferred** to section 38-1423.
- 71-1332. **Repealed.** Laws 2007, LB 463, § 1319.
- 71-1333. **Transferred** to section 38-1424.
- 71-1333.01. **Repealed.** Laws 2007, LB 463, § 1319.
- 71-1333.02. **Repealed.** Laws 2007, LB 463, § 1319.
- 71-1333.03. **Repealed.** Laws 2007, LB 463, § 1319.
- 71-1334 and 71-1335. **Repealed.** Laws 1988, LB 1100, §185.
- 71-1336. **Repealed.** Laws 2003, LB 242, s. 154.
- 71-1337 and 71-1338. **Repealed.** Laws 1991, LB 10, §7.
- 71-1339. **Transferred** to section 38-1425.
- 71-1340. **Transferred** to section 38-1426.
- 71-1341. **Transferred** to section 38-1427.
- 71-1342 to 71-1344. **Repealed.** Laws 1986, LB 643, §25.
- 71-1345. **Repealed.** Laws 2007, LB 463, § 1319.
- 71-1346. **Transferred** to section 38-1428.
- 71-1347. **Repealed.** Laws 2002, LB 1021, §111.
- 71-1348. **Repealed.** Laws 1993, LB 187, §39.
- 71-1349 to 71-1353. **Repealed.** Laws 2002, LB 1021, §111.
- 71-1354. **Repealed.** Laws 2007, LB 463, § 1319.

DRUGS AND NARCOTICS

- 28-425. **Transferred** to 28-2510.01

STATUTES PERTAINING TO THE FUNERAL DIRECTING AND EMBALMING PRACTICE ACT

38-1401. Act, how cited.

Sections 38-1401 to 38-1428 shall be known and may be cited as the Funeral Directing and Embalming Practice Act.

Source: Laws 2007, LB463, § 537.

38-1402. Definitions, where found.

For purposes of the Funeral Directing and Embalming Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1403 to 38-1413 apply.

Source: Laws 1927, c. 167, § 92, p. 479; C.S.1929, § 71-1301; Laws 1931, c. 123, § 1, p. 355; C.S.Supp.,1941, § 71-1301; R.S.1943, § 71-194; Laws 1957, c. 293, § 1, p. 1052; R.S.1943, (1990), § 71-194; Laws 1993, LB 187, § 13; Laws 1996, LB 1044, § 557; Laws 1999, LB 828, § 152; Laws 2003, LB 95, § 35; R.S.1943, (2003), § 71-1301; Laws 2007, LB296, § 465; Laws 2007, LB463, § 538.

38-1403. Accredited school of mortuary science, defined.

Accredited school of mortuary science means a school of the same type as those rated Class A by the Conference of Funeral Service Examining Boards of the United States, Inc., approved by the board.

Source: Laws 2007, LB463, § 539.

38-1404. Apprentice, defined.

Apprentice means a person registered with the department as an apprentice who is completing a twelve-month apprenticeship under the supervision of a licensed funeral director and embalmer practicing in the State of Nebraska. The licensed funeral director and embalmer is responsible for all funeral assists and embalmings completed by the apprentice.

Source: Laws 2007, LB463, § 540.

38-1405. Board, defined.

Board means the Board of Funeral Directing and Embalming.

Source: Laws 2007, LB463, § 541.

38-1406. Branch establishment, defined.

Branch establishment means a place of business situated at a specific street address or location which is a subsidiary of a licensed funeral establishment, which contains a casket display room, a viewing area, or an area for conducting funeral services, or all of them, and where any portion of the funeral service or arrangements for the disposition of a dead human body is conducted.

Source: Laws 2007, LB463, § 542.

38-1407. Casket, defined.

Casket means a receptacle for a dead human body and does not include vaults, lawn crypts, mausoleums, or other outside receptacles for caskets.

Source: Laws 2007, LB463, § 543.

38-1408. Crematory authority, defined.

Crematory authority means the legal entity subject to licensure by the department to maintain and operate a crematory and perform cremation.

Source: Laws 2007, LB463, § 544.

38-1409. Embalming, defined.

(1) Embalming means the practice of preparing a dead human body for burial or other final disposal by a licensed funeral director and embalmer or an apprentice, requesting and obtaining burial or removal permits, or assuming any of the other duties incident to the practice of embalming.

(2) Any person who publicly professes to be a funeral director and embalmer or an apprentice is deemed to be practicing embalming.

(3) The performance of the following acts is also deemed to be the practice of embalming: (a) The disinfection and preservation of dead human beings, entire or in part; and (b) the attempted disinfection and preservation thereof by the use or application of chemical substances, fluids, or gases ordinarily used, prepared, or intended for such purposes, either by outward application of such chemical substances, fluids, or gases on the body or by introducing them into the body, by vascular or hypodermic injection, or by direct introduction into the organs or cavities.

Source: Laws 2007, LB463, § 545.

38-1410. Funeral directing, defined.

Funeral directing means (1) counseling families or next of kin in regard to the conduct of a funeral service for a dead human body for burial, disposition, or cremation or directing or supervising burial, disposition, or cremation of dead human bodies, (2) providing for or maintaining a funeral establishment, or (3) the act of representing oneself as or using in connection with one's name the title of funeral director, mortician, or any other title implying that he or she is engaged in the business of funeral directing.

Source: Laws 2007, LB463, § 546.

38-1411. Funeral establishment, defined.

Funeral establishment means a place of business situated at a specific street address or location devoted to the care and preparation of dead human bodies for burial, disposition, or cremation or to conducting or arranging funeral services for dead human bodies.

Source: Laws 2007, LB463, § 547.

38-1412. Licensure examination, defined.

Licensure examination means a national standardized examination, the state jurisprudence examination, and the vital statistic forms examination.

Source: Laws 2007, LB463, § 548.

38-1413. Supervision, defined.

Supervision means the direct oversight or the easy availability of the supervising funeral director and embalmer. The first twenty-five funeral assists and embalmings shall be completed under direct onsite supervision of the supervising funeral director and embalmer.

Source: Laws 2007, LB463, § 549.

38-1414. Funeral directing and embalming; license; requirements.

(1) The department shall issue a single license to practice funeral directing and embalming to applicants who meet the requirements of this section. An applicant for a license as a funeral director and embalmer shall:

(a) Present satisfactory proof that the applicant has earned the equivalent of sixty semester hours of college credit in addition to a full course of instruction in an accredited school of mortuary science. Such hours shall include the equivalent of (i) six semester hours of English, (ii) six semester hours of accounting, (iii) eight semester hours of chemistry, (iv) twelve semester hours of a biological science relating to the human body, and (v) six semester hours of psychology or counseling; and

(b) Present proof to the department that he or she has completed the following training:

(i) A full course of instruction in an accredited school of mortuary science;

(ii) A twelve-month apprenticeship under the supervision of a licensed funeral director and embalmer practicing in the State of Nebraska, which apprenticeship shall consist of arterially embalming twenty-five bodies and assisting with twenty-five funerals; and

(iii) Successful completion of the licensure examination approved by the board.

(2) Any person holding a valid license as an embalmer on January 1, 1994, may continue to provide services as an embalmer after such date. Upon expiration of such valid license, the person may apply for renewal thereof, and the department shall renew such license to practice embalming.

(3) Any person holding a valid license as a funeral director on January 1, 1994, may continue to provide services as a funeral director after such date. Upon expiration of such valid license, the person may apply for renewal thereof, and the department shall renew such license to practice funeral directing.

Source: Laws 1927, c. 167, § 93, p. 480; C.S.1929, § 71-1302; Laws 1931, c. 123, § 1, p. 355; Laws 1937, c. 155, § 1, p. 612; C.S.Supp.,1941, § 71-1302; R.S.1943, § 71-195; Laws 1955, c. 271, § 1, p. 852; Laws 1986, LB 926, § 43; Laws 1987, LB 473, § 19; Laws 1988, LB 1100, § 35; R.S.1943, (1990), § 71-195; Laws 1993, LB 187, § 14; R.S.1943, (2003), § 71-1302; Laws 2007, LB463, § 550.

38-1415. Examinations; requirements.

When the applicant has satisfied the department that he or she either has completed a full course of instruction in an accredited school of mortuary science or has completed all but the final semester of such course, the applicant shall be eligible to take the national standardized examination. The applicant shall pass such examination before beginning his or her twelve-month apprenticeship or the final six months thereof. When the applicant has satisfied the department that he or she has the qualifications specified in section 38-1416, he or she shall be eligible to take

the state jurisprudence and vital statistic forms examination. A grade of seventy-five or above on each part of the licensure examination shall be a passing grade.

Source: Laws 1927, c. 167, § 94, p. 480; C.S.1929, § 71-1303; Laws 1931, c. 123, § 1, p. 356; Laws 1937, c. 155, § 2, p. 613; C.S.Supp.,1941, § 71-1303; R.S.1943, § 71-196; Laws 1955, c. 271, § 2, p. 853; R.S.1943, (1990), § 71-196; Laws 1993, LB 187, § 15; R.S.1943, (2003), § 71-1303; Laws 2007, LB463, § 551.

38-1416. Apprenticeship; apprentice license; examination.

(1) Before beginning an apprenticeship, an applicant shall apply for an apprentice license. The applicant shall show that he or she has completed thirty-nine of the sixty hours required in subdivision (1)(a) of section 38-1414. The applicant may complete the twelve-month apprenticeship in either a split apprenticeship or a full apprenticeship as provided in this section.

(2) A split apprenticeship shall be completed in the following manner:

(a) Application for an apprentice license to complete a six-month apprenticeship prior to attending an accredited school of mortuary science, which license shall be valid for six months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous six-month period;

(b) Successful completion of a full course of study in an accredited school of mortuary science;

(c) Successful passage of the national standardized examination; and

(d) Application for an apprentice license to complete the final six-month apprenticeship, which license shall be valid for six months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous six-month period.

(3) A full apprenticeship shall be completed in the following manner:

(a) Successful completion of a full course of study in an accredited school of mortuary science;

(b) Successful passage of the national standardized examination; and

(c) Application for an apprentice license to complete a twelve-month apprenticeship. This license shall be valid for twelve months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous twelve-month period.

(4) An individual registered as an apprentice on December 1, 2008, shall be deemed to be licensed as an apprentice for the term of the apprenticeship on such date.

Source: Laws 1927, c. 167, § 96, p. 481; C.S.1929, § 71-1305; Laws 1931, c. 123, § 1, p. 357; Laws 1937, c. 155, § 3, p. 613; C.S.Supp.,1941, § 71-1305; R.S.1943, § 71-198; Laws 1986, LB 926, § 44; Laws 1987, LB 473, § 20; Laws 1988, LB 1100, § 36; R.S.1943, (1990), § 71-198; Laws 1993, LB 187, § 16; Laws 2003, LB 242, § 97; R.S.1943, (2003), § 71-1304; Laws 2007, LB463, § 552.

38-1417. Teaching and demonstration; use of dead human bodies.

The board shall have the privileges extended to them for the use of bodies for dissection, demonstrating, and teaching under the requirements of the State Anatomical Board for the distribution and delivery of dead human bodies.

Source: Laws 1927, c. 167, § 97, p. 481; C.S.1929, § 71-1306; Laws 1931, c. 123, § 1, p. 357; C.S.Supp.,1941, § 71-1306; R.S.1943, § 71-199; R.S.1943, (1990), § 71-199; Laws 1993, LB 187, § 17; Laws 1999, LB 828, § 153; R.S.1943, (2003), § 71-1305; Laws 2007, LB463, § 553.

38-1418. Violations; evidence.

The finding of chemical substances, fluids, or gases ordinarily used in embalming or any trace thereof in a dead human body, the use of which is prohibited except by a licensed funeral director and embalmer, or the placing thereof upon a dead human body by other than a licensed funeral director and embalmer shall constitute prima facie evidence of the violation of the Funeral Directing and Embalming Practice Act.

Source: Laws 1927, c. 167, § 98, p. 481; C.S.1929, § 71-1307; Laws 1931, c. 123, § 1, p. 357; C.S.Supp.,1941, § 71-1307; R.S.1943, § 71-1,100; R.S.1943, (1990), § 71-1,100; Laws 1993, LB 187, § 18; R.S.1943, (2003), § 71-1306; Laws 2007, LB463, § 554.

38-1419. Funeral establishment; qualifications; relocation; change of manager; change of name.

(1) In order for a funeral establishment to be licensed, it shall employ as its manager a licensed funeral director and embalmer who shall be responsible for all transactions conducted in the funeral establishment, except that any person holding a valid license as a funeral director may serve as a manager of a funeral establishment. The manager shall maintain and operate the funeral establishment in accordance with all laws, rules, and regulations relating thereto.

(2) If the applicant for a funeral establishment license proposes to operate more than one establishment, a separate application and fee shall be required for each location.

(3) A funeral establishment desiring to relocate shall make application to the department at least thirty days prior to the designated date of such change in location.

(4) A funeral establishment desiring to change its manager shall make application to the department at least fifteen days prior to the designated date of such change, except that in the case of death of a manager, the application shall be made immediately following such death. No license shall be issued under this subsection by the department until the original license has been surrendered.

(5) A funeral establishment desiring to change its name shall request such change to the department at least thirty days prior to the designated change in name.

Source: Laws 1957, c. 295, § 3, p. 1060; Laws 1973, LB 515, § 15; Laws 1980, LB 94, § 6; Laws 1986, LB 926, § 49; Laws 1987, LB 473, § 37; Laws 1992, LB 1019, § 61; Laws 1993, LB 187, § 20; Laws 2003, LB 242, § 98; R.S.1943, (2003), § 71-1327; Laws 2007, LB463, § 555.

38-1420. Branch establishment; application for license; qualifications; relocation; change of manager; change of name.

(1) If the applicant for a branch establishment license proposes to operate more than one branch establishment, a separate application and fee shall be required for each location.

(2) A branch establishment desiring to relocate shall make application to the department at least thirty days prior to the designated date of such change in location.

(3) A branch establishment desiring to change its manager shall make application to the department at least fifteen days prior to the designated date of such change, except that in the case of death of the manager, the establishment shall make application immediately after such death. No license shall be issued by the department under this subsection until the original license has been surrendered.

(4) A branch establishment desiring to change its name shall apply to the department at least thirty days prior to the designated change in name.

Source: Laws 1993, LB 187, § 21; Laws 2003, LB 242, § 99; R.S.1943, (2003), § 71-1327.01; Laws 2007, LB463, § 556.

38-1421. Reciprocity; military spouse; temporary license.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the requirements of the Funeral Directing and Embalming Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board. An applicant for licensure under the act who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 557; Laws 2017, LB88, § 51.

Operative Date: April 26, 2017

38-1422. Fees.

The department shall establish and collect fees for credentialing under the Funeral Directing and Embalming Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 558.

38-1423. Prohibited acts.

Any person, partnership, limited liability company, firm, corporation, association, or other organization which (1) without having complied with the Funeral Directing and Embalming Practice Act and without having first obtained a license (a) engages directly or indirectly in the business of funeral directing and embalming, (b) holds himself, herself, or itself out to the public as a funeral director and embalmer, or (c) performs or attempts to perform any of the services of a funeral establishment or branch establishment or of a funeral director and embalmer relating to the disposition of dead human bodies or (2) continues to perform such services after the license has expired or has been revoked or suspended shall be dealt with in the same manner as outlined in section 38-1,118. Each day so engaged in such business shall constitute and be deemed a separate offense.

Source: Laws 1957, c. 295, § 7, p. 1062; Laws 1973, LB 515, § 16; Laws 1977, LB 39, § 158; Laws 1980, LB 94, § 9; Laws 1986, LB 926, § 50; Laws 1988, LB 1100, § 101; Laws 1991, LB 10, § 5; Laws 1992, LB 1019, § 62; Laws 1993, LB 121, § 423; Laws 1993, LB 187, § 23; Laws 1994, LB 1223, § 33; Laws 2003, LB 242, § 100; R.S.1943, (2003), § 71-1331; Laws 2007, LB463, § 559.

38-1424. Funeral directors and embalmers and funeral establishments; prohibited acts; section, how construed.

(1) In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a credential issued under the Funeral Directing and Embalming Practice Act may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or credential holder is found guilty of any of the following acts or offenses:

- (a) Solicitation of dead human bodies by the credential holder or his or her agents, assistants, or employees, either prior to or following death;
- (b) The purchasing of funeral or embalming engagements or the payment of a commission either directly or indirectly or offer of payment of such commission to any agent, assistant, or employee for the purpose of securing business;
- (c) Using indecent, profane, or obscene language in the presence of a dead human body or within the immediate presence or hearing of the family, relatives, or friends of the deceased prior to the burial of the deceased;
- (d) Soliciting or accepting any remuneration, commission, bonus, or rebate in consideration of the recommending or causing a dead human body to be placed in any crematory, mausoleum, or cemetery;
- (e) Using any casket or part thereof which has previously been used as a receptacle for, or in connection with, the shipment, burial, or other disposition of a dead human body without first identifying such item as used;
- (f) Violations of any state law, municipal ordinance, or rule or regulation of the department or other body having regulatory powers, relating to the handling, custody, care, or transportation of dead human bodies;
- (g) Refusal to surrender promptly the custody of a dead human body upon request of a person or persons lawfully entitled to the custody thereof; or
- (h) Taking undue advantage of a patron or patrons, or being found guilty of fraud, or misrepresentation in the selling of merchandise or service to patrons.

(2) An applicant or a credential holder shall be subject to the penalty provisions of this section if found guilty of any of the following:

- (a) Paying, directly or indirectly, any money or other thing of value as a commission or gratuity for the securing of business;
- (b) The buying of a business of any person, firm, or corporation, or the paying of a commission to any person, firm, or corporation or to any hospital or any institution where death occurs or to any hospital superintendent, nurse, intern, or other employee, whether directly or indirectly; or
- (c) Willful malpractice.

(3) Any funeral director and embalmer who commits any of the acts or things prohibited by this section or otherwise violates any of the provisions thereof shall be guilty of a Class II misdemeanor.

(4) Nothing in this section shall be construed to prohibit a licensed funeral director and embalmer from engaging in sales of funeral goods or services under the Burial Pre-Need Sale Act.

Source: Laws 1957, c. 295, § 9, p. 1063; Laws 1963, c. 411, § 1, p. 1331; Laws 1980, LB 94, § 11; Laws 1987, LB 473, § 40; Laws 1988, LB 1100, § 103; Laws 1993, LB 187, § 25; R.S.1943, (2003), § 71-1333; Laws 2007, LB463, § 560.

38-1425. Deceased persons; funeral and disposition arrangements; liability.

(1) Any person signing a funeral service agreement, a cremation authorization form, or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts set forth in such agreement, form, or authorization, including the identity of the decedent whose remains are to be buried, cremated, or otherwise disposed of and the person's right of disposition. A funeral establishment, cemetery, or crematory authority shall have the right to rely on such agreement, form, or authorization and shall have the authority to carry out the instructions of the person or persons whom the funeral establishment, cemetery, or crematory authority reasonably believes holds the right of disposition. No funeral establishment, cemetery, or crematory authority shall have the responsibility to contact or to independently investigate the existence of any next-of-kin or relative of the decedent. If there is more than one person in a class equal in priority and the funeral establishment, cemetery, or crematory authority has no knowledge of any objection by other members of such class, the funeral establishment, cemetery, or crematory authority shall be entitled to rely on and act according to the instructions of the first such person in the class to make funeral and disposition arrangements so long as no other person in such class provides written notice of his or her objections to the funeral establishment, cemetery, or crematory authority, as the case may be.

(2) The liability for the reasonable cost of the final disposition of the remains of the decedent devolves jointly and severally upon all kin of the decedent in the same degree of kindred into which the right of disposition fell and upon the estate of the decedent and, in cases where a county board has the right to control disposition of the remains under subdivision (2)(j) of section 30-2223, upon the county in which the death occurred from funds available for such purpose.

(3) If the decedent died during active military service, as provided in 10 U.S.C. 1481 (a)(1) through (8), in any branch of the United States armed forces, United States reserve forces, or national guard, the person authorized by the

decedent to direct disposition pursuant to section 564 of Public Law 109-163, as listed on the decedent's United States Department of Defense record of emergency data, DD Form 93, or its successor form, shall take priority over all other persons described in section 30-2223.

Source: Laws 1959, c. 325, § 1, p. 1186; Laws 1959, c. 326, § 1, p. 1189; Laws 1998, LB 1354, § 7; Laws 1999, LB 46, § 5; Laws 2003, LB 95, § 36; R.S.1943, (2003), § 71-1339; Laws 2007, LB463, § 561; Laws 2013, LB420, § 1; Laws 2014, LB998, § 9.

38-1426. Final disposition; instructions; remains of deceased person; disposition; liability.

(1) A decedent, prior to his or her death, may direct the preparation for the final disposition of his or her remains by written instructions as provided in sections 30-2223 and 38-1425. If such instructions are in a will or other written instrument, the decedent may direct that the whole or any part of such remains be given to a teaching institution, university, college, or legally licensed hospital, to the director, or to or for the use of any nonprofit blood bank, artery bank, eye bank, or other therapeutic service operated by any agency approved by the director under rules and regulations established by the director. The person or persons otherwise entitled to control the disposition of the remains under this section shall faithfully carry out the directions of the decedent.

(2) If such instructions are contained in a will or other written instrument, they shall be immediately carried out, regardless of the validity of the will in other respects or of the fact that the will may not be offered for or admitted to probate until a later date.

(3) This section shall be administered and construed to the end that such expressed instructions of any person shall be faithfully and promptly performed.

(4) A funeral director and embalmer, physician, or cemetery authority shall not be liable to any person or persons for carrying out such instructions of the decedent, and any teaching institution, university, college, or legally licensed hospital or the director shall not be liable to any person or persons for accepting the remains of any deceased person under a will or other written instrument as set forth in this section.

Source: Laws 1959, c. 325, § 2, p. 1187; Laws 1993, LB 187, § 30; Laws 1996, LB 1044, § 559; Laws 2003, LB 95, § 37; R.S.1943, (2003), § 71-1340; Laws 2007, LB296, § 467; Laws 2007, LB463, § 562; Laws 2014, LB998, § 10.

38-1427. Autopsy; written authorization; removal of organs; when performed.

A written authorization for an autopsy given by the person listed in section 30-2223 having the right of disposition of the remains may, subject to section 23-1824 and when not inconsistent with any directions given by the decedent pursuant to section 38-1426, include authorization for the removal of any specifically named organ or organs for therapeutic or scientific purposes. Pursuant to any such written authorization, any structure or organ may be given to the director or to any other therapeutic service operated by any nonprofit agency approved by the director, including, but not limited to, a teaching institution, university, college, legally licensed hospital, nonprofit blood bank, nonprofit artery bank, nonprofit eye bank, or nationally recognized nonprofit hormone and pituitary program. The person or persons performing any autopsy shall do so within a reasonable time and without delay and shall not exceed the removal permission contained in such written authorization, and the remains shall not be significantly altered in external appearance nor shall any portion thereof be removed for purposes other than those expressly permitted in this section.

Source: Laws 1959, c. 325, § 3, p. 1188; Laws 1959, c. 326, § 2, p. 1189; Laws 1985, LB 130, § 1; Laws 1996, LB 1044, § 560; Laws 1999, LB 46, § 6; R.S.1943, (2003), § 71-1341; Laws 2007, LB296, § 468; Laws 2007, LB463, § 563; Laws 2014, LB998, § 11.

38-1428. Funeral director and embalmer; principal services; statement of costs.

A written statement, signed by the funeral director and embalmer or legal representative, of all principal services and furnishings to be supplied by the funeral director and embalmer for the preparation and burial or cremation of the deceased, together with the actual cost of the services including the total actual costs, shall be given to the next of kin or other person responsible for the making of the funeral arrangements prior to the burial or disposition of the deceased. For purposes of this section principal services shall include, but not be limited to, the casket, outer receptacle, facilities and equipment, professional services, nonlocal transportation, clothing, an itemization of all cash advances, and sales tax. A copy of such statement, signed by the person to whom it was tendered, shall be retained in the records of the funeral director and embalmer for a period of at least two years.

Source: Laws 1980, LB 94, § 17; Laws 1993, LB 187, § 32; R.S.1943, (2003), § 71-1346; Laws 2007, LB463, § 564.

STATUTES PERTAINING TO CREMATION OF HUMAN REMAINS ACT

71-1355. Act, how cited.

Sections 71-1355 to 71-1385 shall be known and may be cited as the Cremation of Human Remains Act.

Source: Laws 2003, LB 95, § 1; Laws 2015, LB146, § 1.

Cross References

- **Funeral Directing and Embalming Practice Act**, see section 38-1401.

71-1356. Terms, defined.

For purposes of the Cremation of Human Remains Act, unless the context otherwise requires:

- (1) Alternative container means a container in which human remains are placed in a cremation chamber for cremation;
- (2) Authorizing agent means a person vested with the right to control the disposition of human remains pursuant to section 30-2223 or a person authorized on the decedent's United States Department of Defense record of emergency data, DD Form 93, or its successor form, as provided in section 38-1425;
- (3) Casket means a rigid container made of wood, metal, or other similar material, ornamented and lined with fabric, which is designed for the encasement of human remains;
- (4) Cremated remains means the residue of human remains recovered after cremation and the processing of such remains by pulverization, leaving only bone fragments reduced to unidentifiable dimensions, and the unrecoverable residue of any foreign matter, such as eyeglasses, bridgework, or other similar material, that was cremated with the human remains;
- (5) Cremated remains receipt form means a form provided by a crematory authority to an authorizing agent or his or her representative that identifies cremated remains and the person authorized to receive such remains;
- (6) Cremation means the technical process that uses heat and evaporation to reduce human remains to bone fragments;
- (7) Cremation chamber means the enclosed space within which a cremation takes place;
- (8) Crematory means a building or portion of a building which contains a cremation chamber and holding facility;
- (9) Crematory authority means the legal entity subject to licensure by the department to maintain and operate a crematory and perform cremation;
- (10) Crematory operator means a person who is responsible for the operation of a crematory;
- (11) Delivery receipt form means a form provided by a funeral establishment to a crematory authority to document the receipt of human remains by such authority for the purpose of cremation;
- (12) Department means the Division of Public Health of the Department of Health and Human Services;
- (13) Director means the Director of Public Health of the Division of Public Health;
- (14) Funeral director has the same meaning as in section 71-507;
- (15) Funeral establishment has the same meaning as in section 38-1411;
- (16) Holding facility means the area of a crematory designated for the retention of human remains prior to cremation and includes a refrigerated facility;
- (17) Human remains means the body of a deceased person, or a human body part, in any stage of decomposition and includes 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;
- (18) Permanent container means a receptacle made of durable material for the long-term placement of cremated remains;
- (19) Temporary container means a receptacle made of cardboard, plastic, or other similar material in which cremated remains are placed prior to the placement of such remains in an urn or other permanent container;
- (20) Veteran means a person who served on active duty as a member of the United States Armed Forces, a member of the Nebraska National Guard, or a member of the United States Reserve Forces, who was discharged or released from such service under conditions other than dishonorable, and who is eligible for burial in a veteran cemetery;
- (21) Veteran cemetery means a cemetery under the control of the United States Department of Veterans Affairs National Cemetery Administration or the Nebraska Department of Veterans' Affairs; and
- (22) Veterans service organization means an association, corporation, or other entity that is:
 - (a) A charitable organization that is tax exempt under section 501(c)(3), 501(c)(4), or 501(c)(19) of the Internal Revenue Code of 1986; and
 - (b) Organized for the benefit of veterans burial and interment and recognized by the Memorial Affairs Division of the United States Department of Veterans Affairs or the Nebraska Department of Veterans' Affairs. The term includes a member or employee of an eligible nonprofit veterans association, corporation, or entity that specifically assists in facilitating the identification, recovery, and interment of the unclaimed cremated remains of veterans.

Source: Laws 2003, LB 95, § 2; Laws 2007, LB296, § 469; Laws 2007, LB463, § 1186; Laws 2014, LB998, § 15; Laws 2015, LB146, § 2.

71-1357. Crematory; license required.

A crematory shall not be established, operated, or maintained in this state except by a crematory authority licensed by the department under the Cremation of Human Remains Act. The department shall issue a license to a crematory authority that satisfies the requirements for licensure under the act. Human remains shall not be cremated in this state except at a crematory operated by a crematory authority licensed under the act.

Source: Laws 2003, LB 95, § 3; Laws 2007, LB463, § 1187.

71-1358. Crematory; building and location requirements.

(1) A crematory shall conform to all building codes and environmental regulations.

(2) A crematory may be constructed at any location consistent with applicable zoning and environmental regulations.

Source: Laws 2003, LB 95, § 4.

71-1359. License; application; requirements; fee.

An applicant for an initial or renewal license as a crematory authority shall file a written application with the department. The application shall be accompanied by the license fee required under section 71-1363 and a certificate confirming that the crematory operator has attended, prior to issuance of the license, a training course provided by the Cremation Association of North America or by the manufacturer of the cremation chamber maintained and operated by the crematory authority and shall set forth the full name and address of the applicant, the address and location of the crematory, the name of the crematory operator, the name and address of the owner of the crematory, and additional information as required by the department, including affirmative evidence of the applicant's ability to comply with rules and regulations adopted and promulgated under the Cremation of Human Remains Act. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be public record and may only be used for administrative purposes.

Source: Laws 2003, LB 95, § 5.

71-1360. License; expiration.

Except as otherwise provided in the Cremation of Human Remains Act, licenses issued pursuant to the act shall expire five years after the date of issuance. Licenses shall be issued only for the crematory authority named in the application and shall not be transferable or assignable.

Source: Laws 2003, LB 95, § 6.

71-1361. Crematory; change in location, ownership, or name; application; requirements; fee.

(1) A crematory authority desiring to relocate a crematory shall file a written application with the department at least thirty days prior to the designated date of such relocation. The application shall be accompanied by a fee determined by the department in rules and regulations.

(2) A crematory authority desiring to change ownership of a crematory shall file a written application with the department at least thirty days prior to the designated date of such change. The application shall be accompanied by a fee determined by the department in rules and regulations.

(3) A crematory authority desiring to change its name shall file a written application with the department at least thirty days prior to such change. The application shall be accompanied by a fee determined by the department in rules and regulations.

Source: Laws 2003, LB 95, § 7; Laws 2007, LB463, § 1188.

71-1362. Provisional license.

A provisional license may be issued to a crematory authority that substantially complies with requirements for licensure under the Cremation of Human Remains Act and rules and regulations adopted and promulgated under the act. Such provisional license shall be valid for a period of up to one year, shall not be renewed, and may be converted to a regular license upon a showing that the crematory authority fully complies with the requirements for licensure under the act and rules and regulations.

Source: Laws 2003, LB 95, § 8.

71-1363. Licensure; fees.

(1) The fee for an initial or renewal license as a crematory authority shall include a fee determined by the department in rules and regulations.

(2) If the license application is denied, the license fee shall be returned to the applicant, except that the department may retain up to twenty-five dollars as an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

(3) The department shall collect the same fee as provided in subsection (1) of this section for reinstatement of a license that has lapsed or has been suspended. The department shall collect a fee of ten dollars for a duplicate original license.

(4) The department shall collect a fee of twenty-five dollars for a certified statement that a crematory authority is licensed in this state and a fee of five dollars for verification that a crematory authority is licensed in this state.

(5) The department shall adopt and promulgate rules and regulations for the establishment of fees under the Cremation of Human Remains Act.

(6) The department shall collect fees authorized under the act and shall remit such fees to the State Treasurer for credit to the Health and Human Services Cash Fund. Such fees shall only be used for activities related to the licensure of crematory authorities.

Source: Laws 2003, LB 95, § 9; Laws 2007, LB296, § 470; Laws 2007, LB463, § 1189.

71-1364. Department; inspection; report; duties; noncompliance; procedure.

(1) The department may inspect or provide for the inspection of any crematory operated by a crematory authority licensed under the Cremation of Human Remains Act in such manner and at such times as provided in rules and regulations adopted and promulgated by the department.

(2) The department shall issue an inspection report and provide a copy of the report to the crematory authority within ten working days after the completion of an inspection. The department shall review any findings of noncompliance contained in such report within twenty working days after such inspection.

(3) If the department determines, after such review, that the evidence supports a finding of noncompliance by a crematory authority with any applicable provisions of the Cremation of Human Remains Act or rules and regulations adopted and promulgated under the act, the department may send a letter to the crematory authority requesting a statement of compliance. The letter shall include a description of each alleged violation, a request that the crematory authority submit a statement of compliance within ten working days, and a notice that the department may take further action if the statement of compliance is not submitted. The statement of compliance shall indicate any actions by the crematory authority which have been or will be taken and the period of time estimated to be necessary to correct each alleged violation. If the crematory authority fails to submit such statement of compliance or fails to make a good faith effort to correct the alleged violations, the department may take further action as provided in sections 71-1366 to 71-1369.

Source: Laws 2003, LB 95, § 10.

71-1365. Complaints; department; duties; confidentiality; immunity.

(1) Any person may submit a complaint to the department and request investigation of an alleged violation of the Cremation of Human Remains Act or rules and regulations adopted and promulgated under the act. The department shall review all complaints and determine whether to conduct an investigation relating to such complaints.

(2) A complaint submitted to the department under this section shall be confidential. A person submitting such complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for submitting the complaint or for disclosure of documents, records, or other information to the department relating to such complaint.

Source: Laws 2003, LB 95, § 11.

71-1366. Imminent danger; department; powers.

(1) If the director determines that a crematory authority is operating a crematory so as to create an imminent danger of death or serious physical harm to persons employed at or in proximity to such crematory, he or she may order the temporary suspension or temporary limitation of the license of the crematory authority and may order the temporary closure of the crematory pending further action by the department. A hearing shall be held by the department no later than ten days after the date of such order. The department shall also simultaneously institute proceedings for revocation, suspension, or limitation of the license of the crematory authority.

(2) A continuance of the hearing under subsection (1) of this section shall be granted by the department upon written request from the crematory authority. Such continuance shall not exceed thirty days.

(3) A temporary suspension or temporary limitation order by the director under this section shall take effect when served upon the crematory authority and shall not exceed ninety days. If further action is not taken by the department within such period, the temporary suspension or temporary limitation shall expire.

Source: Laws 2003, LB 95, § 12.

71-1367. Deny or refuse to renew license; disciplinary action; grounds.

The department may deny or refuse to renew a license under the Cremation of Human Remains Act or take disciplinary action against a crematory authority licensed under the act as provided in section 71-1368 on any of the following grounds:

- (1) Violation of the Cremation of Human Remains Act or rules and regulations adopted and promulgated under the act;
- (2) Conviction of any crime involving moral turpitude;
- (3) Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony and which has a rational connection with the fitness or capacity of the crematory authority to operate a crematory;
- (4) Conviction of a violation pursuant to section 71-1371;
- (5) Obtaining a license as a crematory authority by false representation or fraud;
- (6) Misrepresentation or fraud in the operation of a crematory; or
- (7) Failure to allow access by an agent or employee of the Department of Health and Human Services to a crematory operated by the crematory authority for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of such department.

Source: Laws 2003, LB 95, § 13; Laws 2007, LB296, § 471.

71-1368. Disciplinary actions; fine; disposition.

- (1) The department may impose any one or more of the following types of disciplinary action against a crematory authority licensed under the Cremation of Human Remains Act:
 - (a) A fine not to exceed five hundred dollars per violation;
 - (b) A limitation on the license and upon the right of the crematory authority to operate a crematory to the extent, scope, or type of operation, for such time, and under such conditions as the director finds necessary and proper;
 - (c) Placement of the license on probation for a period not to exceed two years during which the crematory may continue to operate under terms and conditions fixed by the order of probation;
 - (d) Suspension of the license for a period not to exceed two years during which the crematory may not operate; and
 - (e) Revocation and permanent termination of the license.

(2) Any fine imposed and unpaid under the Cremation of Human Remains Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the crematory is located. The department shall remit fines to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2003, LB 95, § 14; Laws 2007, LB296, § 472.

71-1369. Appeal.

Any party to a decision of the department under the Cremation of Human Remains Act may appeal such decision. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2003, LB 95, § 15.

Cross References

- **Administrative Procedure Act**, see section 84-920.

71-1370. License; reinstatement or relicensure.

- (1) If the license of a crematory authority has lapsed for nonpayment of fees, such license shall be eligible for reinstatement at any time upon application to the department and payment of the applicable fee as provided in section 71-1363.
- (2) If the license of a crematory authority has been placed on probation, such license shall be eligible for reinstatement at the end of the period of probation upon successful completion of an inspection if the department determines an inspection is warranted.
- (3) If the license of a crematory authority has been suspended, such license shall be eligible for reinstatement at the end of the period of suspension upon successful completion of an inspection and payment of the applicable fee as provided in section 71-1363.
- (4) If the license of a crematory authority has been suspended, such license may be reinstated by the department prior to the completion of the term of suspension upon petition by the licensee. After reviewing such petition and any material submitted by the licensee with such petition, the department may order an inspection or investigation of the licensee. Based on such review and such inspection or investigation, if any, the director shall (a) grant full reinstatement of the license, (b) modify the suspension, or (c) deny the petition for reinstatement. The director's decision shall become final thirty days after mailing the decision to the licensee unless the licensee requests a hearing within such period. Any requested hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases.

(5) If the license of a crematory authority has been revoked, such crematory authority shall not be eligible for relicensure until five years after the date of such revocation. A reapplication for an initial license may be made by the crematory authority at the end of such five-year period.

(6) The department may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2003, LB 95, § 16.

71-1371. Nuisance; abatement; acts prohibited; penalty.

(1) Maintaining or operating a crematory in violation of the Cremation of Human Remains Act or any rules and regulations of the department adopted and promulgated under the act is a public nuisance and may be abated as a nuisance as provided by law.

(2) It is a Class III misdemeanor to (a) establish, operate, or maintain a crematory subject to the Cremation of Human Remains Act without being licensed as a crematory authority under the act, (b) hold oneself out to the public as a crematory authority without being licensed under the act, or (c) perform a cremation without a cremation authorization form signed by the authorizing agent and a completed permit for transit or cremation as provided by the department or a cremation permit.

(3) Signing a cremation authorization form with actual knowledge that the form contains false, incorrect, or misleading information is a Class III misdemeanor.

(4) A violation of any other provision of the Cremation of Human Remains Act is a Class III misdemeanor.

Source: Laws 2003, LB 95, § 17.

71-1372. Injunction; authorized.

The department may maintain an action in the name of the State of Nebraska for an injunction against any person for establishing, operating, or maintaining a crematory without first obtaining a license as a crematory authority under the Cremation of Human Remains Act. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, operate, or maintain a crematory without obtaining a license as a crematory authority under the act, without alleging any further or more particular facts concerning the same.

Source:Laws 2003, LB 95, § 18.

71-1373. Cremation; right to authorize.

The right to authorize the cremation of human remains and the final disposition of the cremated remains, except in the case of a minor subject to section 23-1824 and unless other directions have been given by the decedent in the form of a testamentary disposition or a pre-need contract, vests pursuant to section 30-2223.

Source: Laws 2003, LB 95, § 19; Laws 2007, LB463, § 1190; Laws 2014, LB998, § 16.

71-1374. Crematory authority; delivery receipt form; duties.

(1) A crematory authority upon receiving human remains shall sign a delivery receipt form and shall hold the human remains, prior to cremation, as provided in this section. The form shall include the name of the deceased, the time and date of delivery of such remains, and the signatures of the owner of the crematory or his or her representative and the funeral director or his or her representative.

(2) If a crematory authority is unable to cremate the human remains immediately upon taking receipt thereof, the crematory authority shall place the human remains in a holding facility. A holding facility shall be designed and constructed to (a) comply with all applicable public health laws, (b) provide for the health and safety of persons employed at such facility, and (c) prevent any unauthorized access to such facility.

(3) A crematory authority may refuse to accept for holding an alternative container or casket from which there is any evidence of leakage of the body fluids from the human remains in the container.

(4) If human remains received by the crematory authority are not embalmed, such remains shall be held no longer than twenty-four hours from the time of death unless the human remains are placed within a refrigerated facility in accordance with the laws of this state.

Source: Laws 2003, LB 95, § 20.

71-1375. Crematory operation; limitations.

(1) No person shall be permitted in a crematory, unless authorized by the crematory authority, while any human remains are in the crematory awaiting cremation, being cremated, or being removed from the cremation chamber.

(2) The human remains of more than one person shall not be simultaneously cremated within the same cremation chamber unless the crematory authority has received specific written authorization from the authorizing agent for the human remains to be so cremated.

Source: Laws 2003, LB 95, § 21.

71-1376. Crematory authority; operation; requirements.

(1) A crematory authority shall not accept human remains for cremation without a proper label indicating the name of the deceased and the name and location of the funeral establishment placed on the exterior of the alternative container or casket.

(2) No crematory authority shall make or enforce any rules requiring that human remains be placed in a casket before cremation or that human remains be cremated in a casket. No crematory authority shall refuse to accept human remains for cremation if the human remains are not in a casket.

(3) No crematory authority shall accept human remains for cremation unless the human remains are delivered to the crematory authority in an alternative container or casket or delivered to the crematory authority's holding facility to be placed in an alternative container or casket. Human remains delivered to a crematory in an alternative container shall not be removed from the alternative container, and the alternative container shall be cremated with the human remains. A crematory authority may refuse (a) a noncombustible casket or any other container that is not an alternative container or (b) a casket or container that is not labeled as required under subsection (1) of this section.

(4) An alternative container shall:

- (a) Be composed of readily combustible materials suitable for cremation;
- (b) Be able to be closed to provide for complete encasement of the human remains;
- (c) Be resistant to leakage or spillage;
- (d) Be rigid enough for easy handling; and
- (e) Provide protection for the health and safety of persons handling such container.

Source: Laws 2003, LB 95, § 22.

71-1377. Cremation authorization form; required; contents.

(1) A crematory authority shall not cremate human remains until it has received:

- (a) A cremation authorization form as provided in subsection (2) of this section;
- (b) A completed and executed permit for transit or cremation as provided by the department or the appropriate cremation permit from the state from which the human remains were delivered, indicating that the human remains are to be cremated; and
- (c) A delivery receipt form.

(2) A cremation authorization form shall be signed by the authorizing agent and shall include, but not be limited to, the following information:

- (a) The name of the deceased;
- (b) Date and place of death;
- (c) The identity of the funeral director involved in the preparation of the human remains for cremation, if any;
- (d) Notification that the death did or did not occur from a disease declared by the department to be infectious, contagious, communicable, or dangerous to the public health;
- (e) The name of the authorizing agent and the relationship between the authorizing agent and the deceased;
- (f) Authorization by the authorizing agent for the crematory authority to cremate the human remains;
- (g) A representation that the authorizing agent is aware of no objection to the human remains being cremated by any person who has a right to control the disposition of the human remains;
- (h) A representation that the human remains do not contain any material, implants, or conditions that may be potentially hazardous to equipment or persons performing the cremation;
- (i) The name of the person authorized to claim the cremated remains from the crematory authority; and
- (j) The intended disposition of the cremated remains.

(3) A crematory authority shall retain, for at least seven years after the cremation, in printed or electronic format, copies of the cremation authorization form, permit for transit or cremation as provided by the department or cremation permit, cremated remains receipt form, delivery receipt form, and any other records required under the Cremation of Human Remains Act.

Source: Laws 2003, LB 95, § 23.

71-1378. Cremation authorization form; signature.

(1) Any person signing a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth on such form, including the identity of the deceased whose remains are sought to be cremated and the authority of the person to authorize such cremation. Any person signing a cremation authorization form is personally liable for all damages resulting from false, incorrect, or misleading information contained on such form.

(2) A crematory authority may cremate human remains upon the receipt of a cremation authorization form signed by an authorizing agent and a completed and executed permit for transit or cremation or cremation permit as required by law.

Source: Laws 2003, LB 95, § 24.

71-1379. Potentially hazardous implant or condition; jewelry or other valuables; requirements.

(1) No human remains shall be cremated with the knowledge that the human remains contain a pacemaker or defibrillator or other potentially hazardous implant or condition. The authorizing agent shall take all necessary steps to ensure that any such hazardous implant or condition is removed or corrected prior to cremation. If an authorizing agent informs the funeral director and the crematory authority on the cremation authorization form of the presence of such potentially hazardous implant or condition in the human remains, the funeral director shall ensure that all necessary steps have been taken to remove or correct the implant or condition before delivering the human remains to the crematory. A funeral director who knowingly fails to ensure the removal or correction of the hazardous implant or condition prior to delivery and who knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with hazardous implants or conditions are in the custody of a crematory authority, such authority shall have the hazardous implants or conditions removed or corrected by a licensed funeral director and embalmer or a licensed embalmer at a funeral establishment within an embalming preparation room or at a medical facility by appropriate medical personnel.

(2) No human remains shall be cremated with the knowledge that the human remains contain jewelry or other valuables. The authorizing agent shall take all necessary steps to ensure that any jewelry or other valuables are removed prior to cremation. If an authorizing agent informs the funeral director and the crematory authority on the cremation authorization form of the presence of jewelry or other valuables on the human remains, the funeral director shall ensure that all necessary steps have been taken to remove the jewelry or other valuables before delivering the human remains to the crematory. A funeral director who knowingly fails to ensure the removal of the jewelry or other valuables prior to delivery and who knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with jewelry or other valuables are in the custody of a crematory authority, such authority shall provide for the removal of such jewelry or other valuables by a licensed funeral director and embalmer or his or her agent.

Source: Laws 2003, LB 95, § 25.

71-1380. Dispute; crematory authority or funeral establishment; powers and duties.

(1) If a crematory authority or funeral establishment (a) is aware of any dispute concerning the cremation of human remains or (b) has a reasonable basis to believe that such a dispute exists or to question any of the representations made by the authorizing agent with respect to such remains, until the crematory authority receives a court order that a dispute with respect to such remains has been settled, the crematory authority or funeral establishment may refuse to accept such human remains for cremation or to perform a cremation of such remains.

(2) If a crematory authority or funeral establishment is aware of any dispute concerning the release or disposition of cremated remains, the crematory authority or funeral establishment may refuse to release cremated remains until the dispute has been resolved or the crematory authority or funeral establishment has been provided with a court order authorizing the release or disposition of the cremated remains.

Source: Laws 2003, LB 95, § 26.

71-1381. Cremated remains; how treated.

(1) Insofar as is possible, upon completion of the cremation, all of the recoverable residue of the cremation shall be removed from the cremation chamber and any foreign matter or anything other than bone fragments shall be removed from such residue and shall be disposed of by the crematory authority. The remaining bone fragments shall be processed by pulverization so as to reduce the fragments to unidentifiable particles. This subsection shall not apply when the commingling of human remains during cremation is otherwise authorized by law. The presence of incidental and unavoidable residue in the cremation chamber from a prior cremation is not a violation of this subsection.

(2) The cremated remains with proper identification shall be placed in a temporary container or permanent container selected or provided by the authorizing agent. The cremated remains shall not be contaminated with any other object unless specific written authorization to the contrary has been received from the authorizing agent.

(3) If the entirety of the cremated remains will not fit within a temporary container or permanent container, then the remainder of such remains shall be returned to the authorizing agent or his or her representative in a separate container with proper identification.

(4) If the cremated remains are to be shipped, the temporary container or permanent container shall be packed securely in a suitable shipping container that complies with the requirements of the shipper. Unless otherwise directed in writing by the authorizing agent, cremated remains shall be shipped only by a method which includes an internal tracking system and which provides a receipt signed by the person accepting delivery of such remains.

Source: Laws 2003, LB 95, § 27.

71-1382. Cremated remains; final disposition.

(1) For purposes of the Cremation of Human Remains Act, the delivery of the cremated remains to the authorizing agent or his or her representative shall constitute final disposition. If, after a period of sixty days after the date of cremation, the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition of the cremated remains or claimed the cremated remains for final disposition as provided in this section, the crematory authority or the funeral establishment in possession of the cremated remains may dispose of the cremated remains after making a reasonable attempt to contact the authorizing agent or his or her representative.

This method of disposition may be used by any crematory authority or funeral establishment to dispose of all cremated remains in the possession of a crematory authority or funeral establishment on or after August 31, 2003.

(2)(a) Cremated remains shall be delivered or released by the crematory authority or funeral establishment to the representative specified by the authorizing agent on the cremation authorization form.

(b) If the crematory authority or funeral establishment has documentation that the cremated remains are those of a veteran or the spouse or dependent of a veteran who did not desire any funeral or burial-related services or ceremonies recognizing his or her service as a veteran and the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition or claimed the remains after such sixty-day period, the crematory authority or funeral establishment may dispose of the remains.

(c) If the crematory authority or funeral establishment (i) has no information whether the cremated remains are those of a veteran or the spouse or dependent of a veteran or (ii) has information that the cremated remains are those of a veteran or the spouse or dependent of a veteran but no information on whether such veteran desired a service recognizing his or her service as a veteran, the crematory authority or funeral establishment may use the process provided in section 71-1382.01 to relinquish control of such cremated remains.

(d) The owner of the crematory authority or his or her representative and the party receiving the cremated remains shall sign a cremated remains receipt form. The form shall include the name of the deceased, the date, time, and place of receipt of the cremated remains, and the signatures of the owner of the crematory or his or her representative and the authorizing agent or his or her representative. If the cremated remains are shipped, a form used by the shipper under subsection (4) of section 71-1381 may be used in lieu of a completed cremated remains receipt form if the shipper's form contains the information required for a cremated remains receipt form. Both the party delivering such remains and the party receiving such remains shall retain a copy of the cremated remains receipt form or shipper's form. Upon delivery, the cremated remains may be further transported within this state in any manner without a permit.

Source: Laws 2003, LB 95, § 28; Laws 2015, LB146, § 3.

71-1382.01. Cremated remains; veteran or spouse or dependent of veteran; procedures; final disposition; records; immunity.

(1)(a) If the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition of cremated remains or claimed cremated remains for final disposition as provided in section 71-1382, the crematory authority or funeral establishment may provide information regarding the unclaimed remains to the United States Department of Veterans Affairs, the Nebraska Department of Veterans' Affairs, or a veterans service organization and request that the department or the veterans service organization working with the department:

(i) Determine if, based on the information received, the unclaimed cremated remains are those of a veteran or the spouse or dependent of a veteran; and

(ii) Verify if the decedent is eligible for burial in a veteran cemetery.

(b) The information provided to the department may include a copy of the person's death certificate, the person's name, date of birth, place of birth, date of death, marriage certificate, social security number, military service number, branch of service, or military rank on date of death, or the Department of Defense Form 214, also known as the DD Form 214, or its successor form or record.

(c) The information submitted by the crematory authority or funeral establishment to the Nebraska Department of Veterans' Affairs shall not be considered a public record for purposes of sections 84-712 to 84-712.09.

(2) If the crematory authority or funeral establishment receives notification of a determination by the United States Department of Veterans Affairs or the Nebraska Department of Veterans' Affairs that the unclaimed cremated remains are those of a veteran or the spouse or dependent of a veteran and such person is eligible for burial in a veteran cemetery, then the crematory authority or funeral establishment may relinquish control of such remains to a veterans service organization or a designated member or employee of such organization.

(3)(a) The veterans service organization shall provide disposition of the remains of such veteran or the spouse or dependent of a veteran with a funeral at a veteran cemetery after:

(i) The veterans service organization has made reasonable efforts to locate the authorizing agent to notify him or her of the veterans service organization's intent to claim the cremated remains for the purpose of providing disposition in accordance with this section;

- (ii) The cremated remains of such veteran or the spouse or dependent of a veteran have been in the possession of the veterans service organization for a period of at least one year; and
 - (iii) No attempt has been made to claim the unclaimed cremated remains by the authorizing agent within such one-year period.
- (b) The veterans service organization may provide disposition of cremated remains by placement in a tomb, mausoleum, crypt, or columbarium in a veteran cemetery or by burial in a veteran cemetery but shall not scatter the cremated remains.
- (4) If the crematory authority or funeral establishment relinquishes control of the unclaimed cremated remains to a veterans service organization, it shall:
- (a) Establish and maintain a record identifying the veterans service organization receiving the remains; and
 - (b) Retain such record for five years from the date of transfer of the remains to the veterans service organization.
- (5) A crematory operator, funeral director, crematory authority, funeral establishment, or veterans service organization shall not be liable for the disposition of cremated remains in accordance with this section unless there is negligence or misconduct.

Source: Laws 2015, LB146, § 4; Laws 2018, LB497, § 3.

71-1383. Rules and regulations.

The department may adopt and promulgate rules and regulations to implement the Cremation of Human Remains Act, to include, but not be limited to, rules and regulations establishing conditions under which human remains of persons whose death was caused by a disease declared by the department to be infectious, contagious, communicable, or dangerous to the public health may be transported in this state to a crematory for the purpose of cremation, and minimum sanitation standards for all crematories.

Source: Laws 2003, LB 95, § 29.

71-1384. Crematory authority; bylaws.

A crematory authority may enact reasonable bylaws not inconsistent with the Cremation of Human Remains Act for the management and operation of a crematory operated by such authority. Nothing in this section shall prevent a crematory authority from enacting bylaws which contain more stringent requirements than those provided in the act.

Source: Laws 2003, LB 95, § 30.

71-1385. Act; how construed.

The Cremation of Human Remains Act shall be construed and interpreted as a comprehensive cremation law, and the provisions of the act shall take precedence over any existing laws or rules and regulations that govern human remains that do not specifically address cremation.

Source: Laws 2003, LB 95, § 31.

DRUGS AND NARCOTICS

71-2510.01. Embalming fluids; use of arsenic or strychnine prohibited; label required; violation; penalty.

- (1) No person, firm, corporation, partnership, or limited liability company shall manufacture, give away, sell, expose for sale, or deliver any embalming fluid or other fluids of whatsoever name, to be used for or intended for use in the embalming of dead human bodies, which contain arsenic or strychnine, or preparations, compounds, or salts thereof, without having the words arsenic contained herein or strychnine contained herein, as the case may be, written or printed upon a label pasted on the bottle, cask, flask, or carboy in which such fluid shall be contained.
- (2) No undertaker or other person shall embalm with, inject into, or place upon any dead human body, any fluid or preparation of any kind which contains arsenic or strychnine, or preparations, compounds, or salts thereof.
- (3) Any person, firm, corporation, partnership, or limited liability company violating any of the provisions of subsection (1) or (2) of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1977, LB 38, § 85; Laws 1993, LB 121, § 176; R.S.1943, (2008), § 28-425; Laws 2015, LB37, § 87.

RIGHT OF DISPOSITION OF REMAINS AND FUNERAL ARRANGEMENTS

30-2223.

Right of disposition of remains and funeral arrangements; powers and duties; petition filed with court; considerations; court order.

- (1) Except as otherwise provided by section [23-1824](#), a person who is eighteen years of age or older and of sound mind, by testamentary disposition, by entering into a pre-need sale as defined by section [12-1102](#), or by affidavit as provided in subdivision (2)(a)(ii) of this section, may direct the location, manner, and conditions of disposition of his or her remains and the arrangements for funeral goods and services to be provided upon his or her death.

(2) Except as set forth in subsection (3) of this section or in section [71-20,121](#), the right of disposition, including the right to control the disposition of the remains of a deceased person, the location, manner, and conditions of disposition, and the arrangements for funeral goods and services to be provided, vests in the following order if the person listed is eighteen years of age or older and is of sound mind:

(a)(i) A person designated by the decedent as the person with the right of disposition in an affidavit executed in accordance with subdivision (2)(a)(ii) of this section.

(ii) A person who is eighteen years of age or older and of sound mind wishing to convey the right of disposition to another person may execute an affidavit before a notary public in substantially the following form:

State of }

County of }

I,, do hereby designate with the right to control the disposition of my remains upon my death. I (..... have) (..... have not) attached specific directions concerning the disposition of my remains which the designee shall substantially comply with, so long as such directions are lawful and there are sufficient resources in my estate to carry out the directions. This affidavit does not constitute a durable power of attorney for health care.

..... (signature of person executing affidavit)

Subscribed and sworn to before me this day of the month of of the year

..... (signature of notary public);

(b) The surviving spouse of the decedent;

(c) The sole surviving child of the decedent or, if there is more than one child of the decedent, the majority of the surviving children, except that less than a majority of the surviving children shall be vested with the right of disposition if they have used reasonable efforts to notify all other surviving children of their instructions regarding the right of disposition and are not aware of any opposition to those instructions on the part of a majority of the surviving children;

(d) The surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent shall be vested with the right of disposition after reasonable efforts have been unsuccessful in locating the absent surviving parent;

(e) The surviving brother or sister of the decedent or, if there is more than one sibling of the decedent, the majority of the surviving siblings, except that less than the majority of the surviving siblings shall be vested with the right of disposition if they have used reasonable efforts to notify all other surviving siblings of their instructions regarding the right of disposition and are not aware of any opposition to those instructions on the part of a majority of the surviving siblings;

(f) The surviving grandparent of the decedent or, if there is more than one surviving grandparent, the majority of the grandparents, except that less than the majority of the surviving grandparents shall be vested with the right of disposition if they have used reasonable efforts to notify all other surviving grandparents of their instructions regarding the right of disposition and are not aware of any opposition to those instructions on the part of a majority of the surviving grandparents;

(g) The person in the next degree of kinship, in descending order, under the laws of descent and distribution, to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may exercise the right of disposition;

(h) The guardian of the person of the decedent at the time of the decedent's death, if one had been appointed;

(i) The personal representative of the estate of the decedent. The powers and duties under this section of the personal representative shall commence upon his or her appointment. Such powers and duties of the personal representative shall relate back in time to give acts by the personal representative which are beneficial to the disposition of the decedent's remains occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, the personal representative may carry out written instructions of the decedent relating to his or her body, funeral, and burial arrangements. The personal representative may also ratify and accept acts regarding disposition of the decedent's remains done by others where the acts would have been proper for the personal representative;

(j) The State Anatomical Board or the county board of the county where the death occurred in the case of an indigent person or any other person the disposition of whose remains is a responsibility of the state or county;

(k) A representative as described in section [38-1426](#) or [38-1427](#) that has arranged with the funeral establishment, cemetery, or crematory authority to cremate or bury a body part in the case of body parts received from the entity described in section [38-1426](#) or [38-1427](#); and

(l) In the absence of any person listed in subdivisions (2)(a) through (k) of this section, any other person willing to assume the right of disposition, including the funeral director with custody of the body, after attesting, in writing, that a good faith effort has been made to no avail to contact the persons listed in subdivisions (2)(a) through (k) of this section.

(3) A person entitled under this section to the right of disposition shall forfeit that right and the right is passed on to the next qualifying person as listed in subdivisions (2)(a) through (l) of this section in the following circumstances:

- (a) Any person charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death and whose charges are known to the funeral director. If the charges against such person are dismissed, or if such person is acquitted of the charges, the right of disposition is returned to such person;
- (b) Any person who does not exercise his or her right of disposition within three days after notification of the death of the decedent or within four days after the decedent's death, whichever is earlier;
- (c) If the person and the decedent are spouses and a petition to dissolve the marriage was pending at the time of the decedent's death; or
- (d) If a county court pursuant to subsection (4) of this section determines that the person entitled to the right of disposition and the decedent were estranged at the time of death. For purposes of this subdivision, estranged means a physical and emotional separation from the decedent at the time of death which has existed for a period of time that clearly demonstrates an absence of due affection, trust, and regard for the decedent.
- (4)(a) If two or more persons with the same relationship to the decedent hold the right of disposition and cannot by majority vote make a decision regarding the disposition of the decedent's remains, any of such persons or a funeral home with custody of the remains may file a petition asking the court to make a determination in the matter.
- (b) Notwithstanding subsections (1) through (3) of this section, the county court of the county where the decedent died may award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition and may make decisions regarding the decedent's remains if those sharing the right of disposition cannot agree.
- (c) In making a determination under this subsection, the court shall consider the following:
- (i) The reasonableness and practicality of the proposed funeral arrangements and disposition;
 - (ii) The degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;
 - (iii) The desires of the person or persons who are ready, able, and willing to pay the cost of the funeral arrangements and disposition; and
 - (iv) The convenience and needs of other families and friends wishing to pay respects.
- (d) In the event of a dispute regarding the right of disposition, a funeral establishment, cemetery, or crematory authority is not liable for refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent or complete the arrangements for the final disposition of the remains until the funeral establishment, cemetery, or crematory authority receives a court order or other written agreement signed by the parties in disagreement that decides the final disposition of the remains. If the funeral establishment, cemetery, or crematory authority retains the remains for final disposition while the parties are in disagreement, the funeral establishment may embalm or refrigerate and shelter the body, or both, in order to preserve it while awaiting the final decision of the court and may add the cost of embalming or refrigeration and sheltering to the final disposition costs. If a funeral home brings an action under this subsection, the funeral establishment, cemetery, or crematory authority may add the legal fees and court costs associated with a petition under this subsection to the cost of final disposition. This subsection may not be construed to require or to impose a duty upon a funeral establishment, cemetery, or crematory authority to bring an action under this subsection.
- (e) Except to the degree it may be considered by the court under subdivision (4)(c)(iii) of this section, the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and final disposition does not give that person a greater claim to the right of disposition than the person would otherwise have. The personal representative of the estate of the decedent does not, by virtue of being the personal representative, have a greater claim to the right of disposition than the personal representative would otherwise have.

Source

- [Laws 2014, LB998, § 8.](#)

DEAD HUMAN BODIES

28-1301. Human skeletal remains or burial goods; prohibited acts; penalty.

- (1) The definitions found in section 12-1204 shall apply to this section.
- (2) Except as provided in subsection (3) of this section, a person commits the offense of removing, abandoning, or concealing human skeletal remains or burial goods if he or she:
- (a) Knowingly digs up, disinters, removes, or carries away from its place of deposit or burial any such remains or goods, attempts to do the same, or aids, incites, assists, encourages, or procures the same to be done;
 - (b) Knowingly throws away or abandons any such remains or goods in any place other than a regular place for burial and under a proper death certificate issued under section 38-811 or 71-605; or
 - (c) Receives, conceals, purchases, sells, transports, trades, or disposes of any such remains or goods if the person knows or has reason to know that such remains or goods have been dug up, disinterred, or removed from their place of deposit or burial or have not been reported in a proper death certificate issued under section 38-811 or 71-605, attempts to do the same, or aids, incites, assists, encourages, or procures the same to be done.

(3) This section shall not apply to: (a) A body authorized to be surrendered for purposes of dissection as provided by law; (b) the body of any person directed to be delivered by competent authority for purposes of dissection; (c) the officers of any lawfully constituted cemetery acting under the direction of the board of trustees in removing any human skeletal remains or burial goods from one place of burial in the cemetery to another place in the same cemetery when disinterment and reinterment permits are secured and return made pursuant to section 71-605; (d) any person removing the human skeletal remains or burial goods of a relative or intimate friend from one place of burial in any lawfully constituted cemetery to another when consent for such removal has been obtained from the lawfully constituted authority thereof and permits for disinterment and reinterment secured and return made pursuant to section 71-605; (e) any professional archaeologist engaged in an otherwise lawful and scholarly excavation of a nonburial site who unintentionally encounters human skeletal remains or associated burial goods if the archaeologist complies with the notification requirements of the Unmarked Human Burial Sites and Skeletal Remains Protection Act; or (f) any archaeological excavation by the Nebraska State Historical Society or its designee in the course of execution of the duties of the society if any human skeletal remains or associated burial goods discovered during such excavation are disposed of pursuant to section 12-1208.

(4) Violation of this section shall be a Class IV felony.

Source: Laws 1977, LB 38, § 285; Laws 1989, LB 340, § 13; Laws 2003, LB 95, § 32; Laws 2007, LB463, § 1128.

Cross References: **Unmarked Human Burial Sites and Skeletal Remains Protection Act**, see section 12-1201.