

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 419

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO MORTICIANS, FUNERAL DIRECTORS, AND EMBALMERS; AMENDING SEC-
2 TION 54-1105, IDAHO CODE, TO REMOVE THE SECRETARY POSITION FROM THE
3 BOARD OF MORTICIANS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SEC-
4 TION 54-1109, IDAHO CODE, TO REVISE PROVISIONS REGARDING REQUIREMENTS
5 TO QUALIFY FOR MORTICIAN AND FUNERAL DIRECTOR LICENSURE AND TO MAKE
6 TECHNICAL CORRECTIONS; AMENDING SECTION 54-1111, IDAHO CODE, TO REVISE
7 A PROVISION REGARDING THE TIME LIMIT FOR A LICENSED ESTABLISHMENT TO
8 REPLACE A RESIDENT FULL-TIME LICENSED MORTICIAN AND TO MAKE TECHNICAL
9 CORRECTIONS; REPEALING SECTION 54-1115, IDAHO CODE, RELATING TO
10 LICENSE FEES; AMENDING CHAPTER 11, TITLE 54, IDAHO CODE, BY THE ADDI-
11 TION OF A NEW SECTION 54-1115, IDAHO CODE, TO PROVIDE FOR LICENSE FEES;
12 AMENDING SECTION 54-1116, IDAHO CODE, TO PROVIDE THAT CONVICTION OF A
13 CRIME THAT REFLECTS UPON THE QUALIFICATIONS, FUNCTIONS, OR DUTIES OF
14 A LICENSE AND FAILING AN INSPECTION SHALL BE GROUNDS FOR DENIAL, SUS-
15 PENSION, OR REVOCATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
16 SECTION 54-1128, IDAHO CODE, TO PROVIDE AN EXCEPTION; AMENDING SEC-
17 TION 54-1129, IDAHO CODE, TO PROVIDE FOR THE CERTIFICATION OF LICENSED
18 FUNERAL ESTABLISHMENTS; AMENDING SECTION 54-1130, IDAHO CODE, TO RE-
19 VISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
20 54-1131, IDAHO CODE, TO REVISE A DEFINITION; AMENDING SECTION 54-1132,
21 IDAHO CODE, TO REVISE PROVISIONS REGARDING CERTIFICATES OF AUTHORITY;
22 AMENDING SECTION 54-1133, IDAHO CODE, TO REVISE A PROVISION REGARDING
23 THE FORM AND CONTENT OF A CONTRACT AND TO MAKE TECHNICAL CORRECTIONS;
24 AMENDING SECTION 54-1134, IDAHO CODE, TO REVISE PROVISIONS REGARDING
25 PREARRANGEMENT TRUST FUND DEPOSITS AND TO MAKE TECHNICAL CORRECTIONS;
26 AMENDING SECTION 54-1136, IDAHO CODE, TO REVISE PROVISIONS REGARDING
27 ADVERTISING AND MARKETING OF PREARRANGEMENT SALES AND TO MAKE TECHNICAL
28 CORRECTIONS; AND AMENDING SECTION 54-1137, IDAHO CODE, TO REVISE TERMI-
29 NOLOGY AND TO MAKE TECHNICAL CORRECTIONS.
30

31 Be It Enacted by the Legislature of the State of Idaho:

32 SECTION 1. That Section 54-1105, Idaho Code, be, and the same is hereby
33 amended to read as follows:

34 54-1105. BOARD OF MORTICIANS. (1) There is hereby established in the
35 department of self-governing agencies a state board of morticians to be com-
36 posed of three (3) members who shall be appointed by the governor and who
37 shall serve at the pleasure of the governor in the manner hereinafter set
38 forth. Two (2) members of the board shall be duly licensed morticians under
39 the laws of the state of Idaho ~~and~~. Each shall be a resident of the state of
40 Idaho for a period of at least five (5) years next preceding his appointment,
41 during which time he shall have been continuously engaged in the practice as
42 a mortician as defined in this chapter. One (1) member of the board shall be

1 a member of the public with an interest in the rights of the consumers of mor-
 2 tuary services. No person shall be eligible for appointment to the board of
 3 morticians who is financially interested, directly or indirectly, in any em-
 4 balming college, wholesale funeral supply business, or casket manufacturing
 5 business.

6 (2) The governor may consider recommendations for members of the board
 7 from the Idaho funeral service association, other statewide organization or
 8 association of licensed morticians whose membership is composed of a major-
 9 ity of all licensed morticians of the state or from any individual residing
 10 in this state.

11 (3) All members of the board of morticians shall be appointed to serve
 12 for a term of three (3) years, to expire on May 1 of the year of termination
 13 of their term, and until their successors have been appointed and qualified;
 14 provided however, the governor is hereby granted the power to alter the term
 15 of office of the members of the board first appointed hereunder so that the
 16 term of office of not more than one (1) member of the board shall terminate in
 17 any one (1) year. In case of a vacancy occurring on said board of morticians,
 18 the governor shall appoint a qualified member for the remainder of the unex-
 19 pired term of the vacant office.

20 (4) The board shall meet, not less than annually, to elect a chairman,
 21 ~~and vice chairman and secretary~~ and take official board action on pending
 22 matters by majority vote of all the members of the board of morticians, and in
 23 doing so a majority of the members of said board shall at all times constitute
 24 a quorum. Notice of any meeting shall be given by the chairman to all members
 25 of the board at least ten (10) days in advance of each meeting unless such no-
 26 tice is waived in writing by all of the members of the board.

27 (5) Each member of the board of morticians shall be compensated as pro-
 28 vided by section 59-509(m), Idaho Code.

29 SECTION 2. That Section 54-1109, Idaho Code, be, and the same is hereby
 30 amended to read as follows:

31 54-1109. REQUIREMENTS FOR MORTICIAN LICENSE -- REQUIREMENTS FOR FU-
 32 NERAL DIRECTOR LICENSE -- LICENSE BY ENDORSEMENT. (1) To qualify for a mortici-
 33 an license or funeral director license within the state of Idaho, a person
 34 must be twenty-one (21) years of age or older.

35 (2) The board shall issue to any person a mortician's license to prac-
 36 tice as a mortician and perform mortician services within the state of Idaho
 37 who has complied with and fulfilled all of the following requirements:

38 (a) ~~Has attained the age of twenty-one (21) years.~~

39 ~~(b) Is of good moral character.~~

40 ~~(c) Has completed and received credit for at least sixty (60) semester~~
 41 ~~hours' or ninety (90) quarter-hours' instruction in a duly accredited~~
 42 ~~college or university and has obtained at least a C grade average for~~
 43 ~~all courses of instruction; provided, however, at least three-fourths~~
 44 ~~(3/4) of all of such credits must be for courses in the fields of liberal~~
 45 ~~arts, business or science as defined and specified by the board of mor-~~
 46 ~~ticians.~~

47 ~~(d) Has successfully completed a course in an embalming school accred-~~
 48 ~~ited by the American board of funeral service education, inc., or such~~
 49 ~~other embalming school as approved by the board of morticians~~

1 Has completed and received an associate degree from a mortuary school
 2 accredited by the American board of funeral service education.

3 (~~eb~~) Has practiced as a licensed resident trainee in the state of Idaho
 4 under the personal supervision of a licensed resident mortician for not
 5 less than twelve (12) months, ~~and~~ has assisted in embalming at least
 6 twenty-five (25) dead human bodies ~~and~~, has assisted in making at least
 7 twenty-five (25) funeral arrangements, and has assisted in conducting
 8 at least twenty-five (25) funerals; provided, however, such practice as
 9 a licensed resident trainee of the state of Idaho may be filled and per-
 10 formed either before or after the required post-high school education.

11 (~~fc~~) Has filed an application with the board as required by this chapter
 12 and paid the required filing fee therefor.

13 (~~gd~~) Has passed the required examination prepared and conducted by the
 14 board of morticians. Provided further, that the board shall determine
 15 compliance with all of the ~~above~~ qualifications described in subsec-
 16 tions (1) and (2) of this section, except this paragraph relating to
 17 examinations, at the time the applicant files his application as here-
 18 inafter provided and before the examination is conducted by the board of
 19 morticians.

20 (~~23~~) The board shall issue to any person a funeral director license to
 21 practice as a funeral director and perform funeral director services within
 22 the state of Idaho who has complied with and fulfilled all of the following
 23 requirements:

24 (a) ~~Has attained the age of twenty-one (21) years.~~

25 ~~(b) Is of good moral character.~~

26 ~~(c) Has completed and received at least sixty forty-five (6045)~~
 27 ~~semester hours¹ or ninety sixty-eight (9068) quarter-hours¹ quarter~~
 28 ~~hours of instruction from a duly accredited college or university and~~
 29 ~~has obtained at least a C grade average for all courses of instruction;~~
 30 ~~provided, however, at least three-fourths (3/4) of all such credits~~
 31 ~~must be for courses in the fields of liberal arts, business, or science~~
 32 ~~as defined and specified by the board.~~

33 (~~db~~) Has successfully completed at least fifteen (15) semester credit
 34 hours or the equivalent from a mortuary college accredited by the Amer-
 35 ican board of funeral service education, inc., or such credits as are
 36 otherwise approved by the board, with course of study to include busi-
 37 ness law, psychology, sociology, funeral service counseling, funeral
 38 service management, and other classes that relate to conducting funeral
 39 business.

40 (~~ec~~) Has practiced as a licensed trainee in the state of Idaho under the
 41 personal supervision of a licensed mortician for not less than twelve
 42 (12) months, ~~and~~ has assisted in making at least twenty-five (25) fu-
 43 neral arrangements and in conducting at least twenty-five (25) fune-
 44 rals.

45 (~~fd~~) Has successfully passed the required examination as established
 46 by the rules of the board. An applicant shall not be qualified to take
 47 the examination until all other requirements have been met.

48 (~~ge~~) Has filed an application with the board as required by this chapter
 49 and paid the required fees.

1 (34) Any person holding a current, valid license in another state or
2 territory having substantially similar requirements to those existing in
3 this state, may be granted a license without examination, provided:

4 (a) The applicant files with the board a certified statement from the
5 examining board of the state or territory in which the applicant holds
6 his license, verifying the license and showing the basis upon which the
7 license was granted; and

8 (b) The applicant pays the license fee; and

9 (c) The applicant satisfies the board that he understands the laws and
10 rules of this state as to funeral service.

11 (45) A person holding a current, valid license in another state or
12 territory with requirements significantly lower than those of this state
13 who has at least five (5) consecutive years of experience as a licensee in
14 the other state or territory prior to application, may apply for a license
15 to practice in this state without meeting the full requirements of subsec-
16 tions (1) ~~or~~ through (23) of this section. Upon payment of the license fee
17 and passing such test of proficiency as the board shall require, including,
18 but not limited to, a knowledge of the laws and administrative rules of this
19 state as to funeral service, the board shall grant a license.

20 SECTION 3. That Section 54-1111, Idaho Code, be, and the same is hereby
21 amended to read as follows:

22 54-1111. REQUIREMENTS FOR ESTABLISHMENT LICENSE -- CANCELLATION --
23 RECORDS -- OPERATION BY LEGAL REPRESENTATIVE OF ESTATE. (1) The board shall
24 issue a funeral establishment license or crematory establishment license to
25 any person, partnership, association, corporation or other organization,
26 to operate at specific locations only, which has met the following require-
27 ments:

28 (a) That the applicant, if an individual, is a licensed mortician or
29 funeral director under this chapter and is a resident of the state of
30 Idaho.

31 (b) That the applicant has not been refused a license as a mortician
32 or funeral director, or its equivalent, or ~~for~~ as an establishment, or
33 its equivalent, or had a personal or establishment license revoked in
34 Idaho or in any other state.

35 (c) That the applicant has designated the name under which the estab-
36 lishment will operate and has designated a location for which the estab-
37 lishment license is to be issued.

38 (d) That the applicant has at least one (1) mortician licensed under
39 this chapter who is a resident of the state of Idaho and who is, and will
40 be, in the employ or service of the establishment.

41 (e) That the applicant has filed an application and paid the required
42 filing fee. Provided further, that the board shall make the determina-
43 tion of qualifications of all applicants within a reasonable time after
44 the filing of an application with the board. No establishment license
45 shall be transferable, but an applicant may make application for more
46 than one (1) establishment license ~~so~~ as long as all of the requirements
47 are met for each license.

48 (f) That the applicant for a crematory establishment license holds a
49 current funeral establishment license in the state of Idaho.

1 (2) All applications for establishment licenses shall be in writing and
 2 shall contain the name of the applicant, the address and location of the es-
 3 tablishment, and a description of the type of structure and equipment to be
 4 used in the operation of the establishment, and such further information as
 5 may be required by the board to ensure the safe and sanitary operation of the
 6 establishment.

7 (3) The mortician responsible for the operation of an establishment
 8 shall maintain such records affecting the handling, custody, care, process-
 9 ing or transportation of human remains as may be required by the laws and
 10 rules of the state of Idaho and the board for all human remains received,
 11 prepared, cremated or otherwise disposed of by the establishment.

12 (4) In the event a licensed establishment ceases to have a resident
 13 full-time licensed mortician in its employ at its place of business, ~~its~~
 14 ~~license shall be canceled immediately by the board upon finding such fact;~~
 15 ~~provided, however, in the event of the death of a licensed mortician who~~
 16 ~~leaves an establishment as part of the assets of his estate, the legal rep-~~
 17 ~~resentative of the estate of the deceased mortician shall be entitled to~~
 18 ~~operate the establishment under the license, or renewals thereof, for a pe-~~
 19 ~~riod not to exceed two (2) years from date of death of the mortician without~~
 20 ~~meeting the qualifications of an applicant and without having a full-time~~
 21 ~~licensed mortician in his employ; provided further, however, this provision~~
 22 the licensed establishment must replace the full-time licensed mortician
 23 within ninety (90) days, or its license shall be canceled. This subsection
 24 shall not permit an unlicensed person to perform mortician services. The
 25 board may for good cause extend the time a licensed establishment has to
 26 replace a resident full-time licensed mortician.

27 SECTION 4. That Section [54-1115](#), Idaho Code, be, and the same is hereby
 28 repealed.

29 SECTION 5. That Chapter 11, Title 54, Idaho Code, be, and the same is
 30 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 31 ignated as Section 54-1115, Idaho Code, and to read as follows:

32 54-1115. LICENSE FEES. Any fee required pursuant to this chapter, in-
 33 cluding fees for original licenses, examinations, annual renewals, and cer-
 34 tificates, shall be set by board rule. All fees shall be paid to the bureau of
 35 occupational licenses.

36 SECTION 6. That Section 54-1116, Idaho Code, be, and the same is hereby
 37 amended to read as follows:

38 54-1116. DENIAL, SUSPENSION, OR REVOCATION OF LICENSES -- GROUNDS --
 39 PROBATION. The board may refuse to issue or may refuse to renew or may suspend
 40 or may revoke any license, or may place the holder thereof on a term of proba-
 41 tion, after proper hearing, upon finding that the holder of such license com-
 42 mitted or is subject to any of the following acts or omissions:

43 (1) Conviction of a crime involving moral turpitude that reflects upon
 44 the qualifications, functions, or duties of the respective license.

45 (2) Conviction of a felony.

46 (3) Unprofessional conduct, which is hereby defined to include:

- 1 (a) Misrepresentation or fraud in the conduct of mortician or funeral
2 director services;
- 3 (b) False or misleading advertising as the holder of a license for the
4 practice of mortician or funeral director services; advertising or us-
5 ing the name of a person who is not an employee of the establishment in
6 connection with that of any establishment;
- 7 (c) Solicitation of dead human bodies by the licensee, his agents, as-
8 sistants or employees, whether such solicitation occurs before death or
9 after death; provided, that this shall not be deemed to prohibit general
10 advertising;
- 11 (d) Employment by the licensee of persons known as "cappers," or
12 "steerers," or "solicitors," or other such persons to solicit or obtain
13 agreements with the public for the performance of mortician services;
- 14 (e) Employment, directly or indirectly, of any resident trainee,
15 agent, assistant, employee, or other person, on part or full time, or on
16 commission, for the purpose of calling upon individuals or institutions
17 by whose influence dead human bodies may be turned over to a particular
18 mortician, funeral director or establishment;
- 19 (f) The direct or indirect payment, or offer of payment, of a commission
20 by the licensee, his agents, assistants, or employees for the purpose of
21 securing business;
- 22 (g) Gross immorality;
- 23 (h) Aiding or abetting an unlicensed person to practice mortician or
24 funeral director services;
- 25 (i) Using profane, indecent or obscene language in the presence of a
26 dead human body, or within the immediate hearing of the family or rel-
27 atives of a deceased, whose body has not yet been interred or otherwise
28 disposed of;
- 29 (j) Violation of any of the provisions of this chapter;
- 30 (k) Violation of any state law, or municipal or county ordinance, or
31 rule authorized under this chapter affecting the handling, custody,
32 care, processing or transportation of dead human bodies;
- 33 (l) Fraud or misrepresentation in obtaining or renewing a license;
- 34 (m) Refusing to promptly surrender the custody of a dead human body
35 upon the express order of the person lawfully entitled to the custody
36 thereof;
- 37 (n) Solicitation or acceptance, directly or indirectly, of a request,
38 before need, for an agreement to provide mortician services or funeral
39 supplies at a price less than that offered by such person to others at
40 time of need;
- 41 (o) Violation of any statutes of any state having to do with prearrange-
42 ment or prefinancing of mortician services or funeral supplies; and
43 (p) Failing an inspection conducted by the board or the board's agent.

44 SECTION 7. That Section 54-1128, Idaho Code, be, and the same is hereby
45 amended to read as follows:

46 54-1128. VIOLATIONS CONSTITUTING MISDEMEANORS -- EXCEPTIONS -- EN-
47 FORCEMENT. Any person who knowingly violates any provision of this chapter,
48 or any licensee under this chapter who shall commit an act of unprofessional
49 conduct as defined and designated under the provisions of subsection (3)

1 of section 54-1116, Idaho Code, except ~~subsections~~ paragraphs (g), (i),
 2 and ~~(j)~~ thereof, shall be guilty of a misdemeanor unless such conduct is
 3 punishable as a felony elsewhere under the law. It shall be the duty of the
 4 board of morticians to see that the provisions of this chapter are properly
 5 administered and enforced throughout the state, and all peace officers and
 6 prosecuting attorneys shall aid in their several capacities in discharge of
 7 these duties.

8 SECTION 8. That Section 54-1129, Idaho Code, be, and the same is hereby
 9 amended to read as follows:

10 54-1129. DECLARATION OF INTENT. It is the purpose of sections 54-1129
 11 through 54-1138, Idaho Code, to provide for the certification of ~~persons~~
 12 licensed funeral establishments selling or offering for sale prearrangement
 13 sales contracts, to provide for the creation and administration of prear-
 14 rangement sales contract trust funds to assure funds for the performance to
 15 purchasers who contract through prearrangement sales contracts for the pur-
 16 chase of funeral and cemetery merchandise and funeral and cemetery services,
 17 and to provide for the disbursement and allocation of trust funds upon the
 18 certified ~~person's~~ seller's performance of ~~his~~ its contractual obligations.
 19 The sections of Idaho Code specified herein shall not affect the provi-
 20 sions of sections 54-1101 through 54-1121 and sections 54-1126 ~~7~~ through and
 21 54-1128, Idaho Code.

22 SECTION 9. That Section 54-1130, Idaho Code, be, and the same is hereby
 23 amended to read as follows:

24 54-1130. SCOPE AND EXCEPTIONS. ~~A.~~ (1) Sections 54-1129 through
 25 54-1138, Idaho Code, apply to all ~~persons who~~ establishments that sell or
 26 offer for sale prepaid funeral or cemetery merchandise or services.

27 ~~B.~~ (2) Sections 54-1133, 54-1134 and 54-1135, Idaho Code, do not apply
 28 to:

29 (1a) Agreements to sell or sales made for rights of interment or entomb-
 30 ment in a cemetery section, lawn crypt section, mausoleum or columbar-
 31 ium ~~which that~~ are in existence at the time of initial payment on the
 32 contract; ~~or~~

33 (2b) Agreements to sell or sales made for monuments and grave markers
 34 that will be delivered and installed upon performance of payment.

35 SECTION 10. That Section 54-1131, Idaho Code, be, and the same is hereby
 36 amended to read as follows:

37 54-1131. DEFINITIONS. As used in sections 54-1132 through 54-1143,
 38 Idaho Code:

39 (1) "Beneficiary" means the person who is to receive the funeral or
 40 cemetery merchandise or funeral or cemetery services.

41 (2) "~~Certified person or seller~~" means any ~~person holding~~ licensed fu-
 42 neral establishment that holds a certificate of registration or ~~who that~~ is
 43 registered to sell or offer for sale prearrangement sales contracts.

44 (3) "Funeral or cemetery merchandise" means personal property normally
 45 and customarily sold by funeral establishments, cemeteries, and crematory

1 establishments including, but not limited to, caskets or other primary con-
2 tainers, burial vaults, casket-vaults, grave liners, funeral clothing or
3 accessories, monuments, grave markers and cremation urns. It shall include:

4 (a) Merchandise identified for the purchaser or the beneficiary to be
5 manufactured for future delivery and use.

6 (b) Merchandise that has been manufactured and held by the manufacturer
7 for future delivery and use.

8 (c) Merchandise that has been manufactured and delivered to and in the
9 possession of the seller, who has placed it, until needed, in storage.

10 (4) "Funeral or cemetery services" means those services normally and
11 customarily performed by a funeral service practitioner, mortician, funeral
12 establishment, cemetery or crematory establishment in conjunction with fu-
13 neral or memorial services, interment, entombment or cremation.

14 (5) "Guaranteed contract" means a written prearrangement sales con-
15 tract that guarantees the beneficiary funeral or cemetery services or
16 funeral or cemetery merchandise contained in the contract and under which
17 no charges other than the sales price contained in the contract shall be
18 required upon delivery of the merchandise or performance of the funeral and
19 cemetery services.

20 (6) "Nonguaranteed contract" means a written prearrangement sales con-
21 tract that does not guarantee the beneficiary any specific funeral or ceme-
22 tery merchandise or services. Any funds paid under this contract are only a
23 deposit to be applied toward the final cost of the funeral or cemetery mer-
24 chandise or services.

25 (7) "Prepaid prearrangement sale or prearrangement sales contract"
26 means any sale, other than a contract of life insurance entered into by an
27 insurance company, that has as its purpose the furnishing of funeral or
28 cemetery merchandise or funeral or cemetery services in connection with the
29 final disposition or commemoration of the memory of a dead human body, for
30 use at a time determinable by the death of the person or persons whose body
31 or bodies are to be disposed and where the sale terms require payment or pay-
32 ments to be made at a currently determinable time.

33 (8) "Primary container" means a casket, rental casket, casket-vault,
34 chapel-vault or other container that serves as the repository for dead human
35 remains.

36 (9) "Public cemetery" means a cemetery owned and operated by a cemetery
37 district organized under Idaho law, or by a municipal corporation or politi-
38 cal subdivision of the state of Idaho.

39 (10) "Purchaser" means a beneficiary or a person acting on behalf of a
40 beneficiary who enters into a prearrangement sales contract with a certified
41 person under which any payment or payments made under the contract are re-
42 quired to be deposited in trust.

43 (11) "Secondary container" means a vault, grave liner, urn or other con-
44 tainer purchased by the buyer for a burial or required by the cemetery that
45 will be the repository for the primary container.

46 (12) "Trustee" means any bank, trust company or savings institution au-
47 thorized to do business in the state of Idaho where accounts are insured with
48 the federal deposit insurance corporation, the federal savings and loan in-
49 surance corporation or other similar agency of the United States government.

1 SECTION 11. That Section 54-1132, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 54-1132. CERTIFICATE OF AUTHORITY -- REQUIREMENTS -- DISPLAY OF CER-
4 TIFICATE. (1) ~~No individual~~ Effective July 1, 2021, no licensed funeral
5 establishment may sell a prepaid contract or provide funeral or cemetery
6 merchandise or funeral or cemetery services pursuant to a prepaid contract
7 without first obtaining a valid certificate of authority. The holder of the
8 funeral establishment license shall be responsible for the certificate of
9 authority and any agent of the establishment who operates under the certifi-
10 cate of authority.

11 (2) A certificate of authority for public cemeteries shall be issued by
12 the governing board, city council or board of county commissioners having
13 overall supervision and control of the cemetery. A certificate of authority
14 for privately owned cemeteries shall be issued by the Idaho board of ceme-
15 terians. A certificate of authority for ~~persons~~ funeral establishments li-
16 censed under chapter 11, title 54, Idaho Code, shall be issued by the state
17 board of morticians and shall be renewed annually at the same time as the fu-
18 neral establishment license is renewed.

19 (23) ~~Any individual~~ A licensed funeral establishment seeking to obtain
20 a certificate of authority must submit a statement that includes the follow-
21 ing:

22 (a) The types of prepaid contracts to be written;

23 (b) The name and address of the place of business of the ~~individual~~
24 licensed funeral establishment; and

25 (c) Any information deemed necessary by the certificating authority to
26 show ~~evidence of good moral character, a reputation for fair dealing in~~
27 ~~business matters, and the absence of a criminal record~~ compliance with
28 section 54-1116, Idaho Code.

29 (34) Upon issuance, the certificate of authority shall be posted
30 conspicuously in the ~~holder's place of business~~ licensed funeral establish-
31 ment.

32 (45) ~~Any individual~~ The agent of any licensed funeral establishment
33 holding a certificate shall present a copy of the certificate to the pur-
34 chaser before engaging in the activity of selling a prearrangement sales
35 contract.

36 (56) A licensed mortician or licensed funeral director shall designate
37 the licensed funeral establishment that shall be responsible to provide any
38 funeral or cemetery merchandise or funeral or cemetery services under prear-
39 rangement sales.

40 (67) The licensed funeral establishment designated as responsible to
41 provide the merchandise and services under a prearrangement sales contract
42 shall maintain all contracts and documents associated with any prearrange-
43 ment sales.

44 SECTION 12. That Section 54-1133, Idaho Code, be, and the same is hereby
45 amended to read as follows:

46 54-1133. FORM AND CONTENT OF CONTRACT -- PRICE DISCLOSURE. ~~A-~~ (1) Each
47 contract shall be written in clear, understandable language and shall be
48 printed or typed in an easy-to-read type font, size, and style.

1 ~~B.~~(2) Each contract shall identify the seller, ~~seller's~~ the certifi-
 2 cate of authority number the certified seller is working under, purchaser,
 3 and the beneficiary if other than the purchaser.

4 ~~C.~~(3) Each contract shall specify the services and/or merchandise to be
 5 provided, as well as a statement of the law regarding substitution as pro-
 6 vided in section 54-1137, Idaho Code.

7 ~~D.~~(4) Each contract shall set forth the purchase price and the terms un-
 8 der which it is to be paid.

9 ~~E.~~(5) Each contract shall conform to other state or federal regula-
 10 tions, including price disclosure. It is the contract seller's duty to
 11 comply with such regulations.

12 ~~F.~~(6) Each contract shall state clearly whether it is a guaranteed
 13 price contract or a nonguaranteed price contract.

14 ~~G.~~(7) Each contract shall state clearly whether it is a revocable or
 15 nonrevocable trust.

16 ~~H.~~(8) Each contract shall state the amount of money to be placed in
 17 trust and the name of the trustee, but the contract may provide that the
 18 certified seller may designate a new trustee to obtain higher interest earn-
 19 ings on the trust funds.

20 ~~I.~~(9) Each contract shall explain the disposition of the interest
 21 and include a statement of the fees, expenses and taxes ~~which~~ that may be
 22 deducted from the interest pursuant to section 54-1134, Idaho Code, and a
 23 statement of the purchaser's responsibility for taxes owed on the interest.

24 ~~J.~~(10) Each contract shall explain the purchaser's cancellation rights
 25 pursuant to section 54-1135, Idaho Code.

26 SECTION 13. That Section 54-1134, Idaho Code, be, and the same is hereby
 27 amended to read as follows:

28 54-1134. PREARRANGEMENT TRUST FUND DEPOSITS. ~~A.~~(1) Within ten (10)
 29 business days of receipt, funds received by the certified seller in payments
 30 of the prepaid contract shall be deposited in trust as follows:

31 (~~1a~~) Fifty ~~per cent~~ percent (50%) of the amount received in payment for
 32 a marker, monument or secondary container shall be deposited with the
 33 trustee to be held in trust; provided however, the first fifty ~~per cent~~
 34 percent (50%) of the fifty ~~per cent~~ percent (50%), or twenty-five ~~per~~
 35 ~~cent~~ percent (25%) of the total, may be collected, accounted for and ap-
 36 plied to the certified seller's cost of purchase with the remainder to
 37 be deposited in trust. No amount need be held in trust for those items
 38 ~~which~~ that are fully purchased by the certified seller and stored for
 39 the purchaser at the certified seller's expense in a bonded warehouse.

40 (~~2b~~) Upon the sale of all other funeral or cemetery merchandise or ser-
 41 vices, there shall be deposited in trust the amount of eighty-five ~~per~~
 42 ~~cent~~ percent (85%) of the amounts received.

43 ~~B.~~(2) Funds deposited in trust shall be identified in the records of the
 44 trustee by the name of the purchaser and beneficiary, and adequate records
 45 shall be maintained to allocate all earnings to each prearrangement sales
 46 contract. Nothing shall prevent the trustee from commingling the deposits
 47 in any such trust fund account for purposes of managing and investing the
 48 funds. A common trust fund account shall be identified by the name of the
 49 trustee.

1 ~~C.~~(3) The certificating authority shall, as often as it deems rea-
 2 sonably necessary, examine the trust account, records, documents, and
 3 contracts of the seller. The certificating authority shall determine the
 4 reasonable cost of such examination, which shall be paid to the certificat-
 5 ing authority by the seller. Each seller is hereby required to file not less
 6 than annually with the certificating authority a certified audit report re-
 7 vealing the number of such contracts or agreements executed by him during the
 8 preceeding year, the total value of said contracts or agreements, the amount
 9 of money collected and paid in trust pursuant to said contracts or agreements
 10 and the name of the trustee. No less than annually, each certificating au-
 11 thority is required to file a certified audit report for each of its sellers,
 12 revealing the total amount of agreements or contracts executed by the seller
 13 during the preceding year, the total value of said contracts or agreements,
 14 the amount of money collected and paid in trust pursuant to said contracts or
 15 agreements, and the name of the trustee.

16 ~~D.~~(4) The interest income from the trust on all contracts may be used
 17 to pay reasonable trustee fees and administrative expenses incurred in the
 18 administration of the trust and taxes. The certificating authority shall,
 19 by rule, establish a limit on the amount of fees and expenses ~~which~~ that may
 20 be deducted from the interest income, and the trustee shall not exceed said
 21 limit.

22 ~~E.~~(5) At the time of providing the services and/or merchandise, any in-
 23 terest income remaining after payment of trustee fees, administrative ex-
 24 penses and taxes shall be disbursed as follows:

25 ~~(1a)~~ On a guaranteed-price prepaid contract, to the seller.

26 ~~(2b)~~ On a nonguaranteed-price prepaid contract, to the purchaser or the
 27 purchaser's estate.

28 ~~F.~~(6) Any person certified seller engaging in prearrangement sales ~~who~~
 29 that enters into a combination sale which that involves the sale of items
 30 subject to trust and any item not subject to trust shall be prohibited from
 31 increasing the sales price of those items not subject to trust with the pur-
 32 pose of allocating a lesser sales price to items ~~which~~ that require a trust
 33 deposit.

34 SECTION 14. That Section 54-1136, Idaho Code, be, and the same is hereby
 35 amended to read as follows:

36 54-1136. SOLICITATION -- LIMITATIONS. (1) The right of a certified
 37 seller to lawfully advertise shall not be restrained, nor shall general ad-
 38 vertising be prohibited.

39 (2) Advertising and marketing of prearrangement sales contracts is
 40 permitted provided that:

41 (a) The certified seller and its agents clearly ~~identifies himself and~~
 42 ~~his~~ identify themselves and their product.

43 (b) The certified seller and its agents shows ~~his~~ the certificate of au-
 44 thority as provided in section 54-1132, Idaho Code. If the marketing is
 45 by telephone, the certified seller and its agents must disclose ~~his~~ the
 46 certificate of authority.

47 ~~(c) The seller makes an appointment with the prospective buyer if the~~
 48 ~~meeting is at a place other than the seller's place of business.~~

1 (3) Advertising and marketing of prearrangement sales contracts is
2 permitted provided that any contract seller shall not:

3 (a) Directly or indirectly call upon or employ any agent, assistant,
4 employee, independent contracting person, or any other person to call
5 upon individuals or persons in hospitals, rest homes, or similar insti-
6 tutions for the purpose of soliciting prepaid contracts for making fu-
7 neral or cemetery or final disposition arrangements without first hav-
8 ing been specifically requested to do so by such person or by his next of
9 kin.

10 (b) Solicit for dead human bodies for the purpose of providing funeral
11 or cemetery services, final disposition, or cemetery or funeral mer-
12 chandise when such solicitation occurs where death is reasonably pend-
13 ing or after death.

14 (c) Solicit or accept or pay any consideration for recommending spec-
15 ified persons to cause a dead human body to be provided funeral or
16 cemetery services or funeral or cemetery merchandise, or the services
17 of a crematory, mausoleum, or cemetery, except where such arrangement
18 is subject to a prepaid contract.

19 (d) Be involved in solicitation ~~which~~ that comprises an uninvited inva-
20 sion of personal privacy at the personal residence of a person, unless
21 the solicitation has been previously and expressly requested by the
22 person solicited.

23 SECTION 15. That Section 54-1137, Idaho Code, be, and the same is hereby
24 amended to read as follows:

25 54-1137. SUBSTITUTIONS -- MERCHANDISE, SERVICES OR PROVIDER. ~~A.~~ (1) If
26 the particular merchandise or service specified in the contract is unavail-
27 able at the time of delivery, the certified seller shall furnish merchandise
28 and services similar in style and at least equal in quality of material and
29 workmanship.

30 ~~B.~~ (2) The evaluation of quality shall be based on objective criteria.

31 ~~C.~~ (3) The person making arrangements for the funeral of the contract
32 beneficiary shall choose the goods and/or services to be substituted and
33 this choice must be reasonable based on the standards in subsections A (1)
34 and B (2) of this section.

35 ~~D.~~ (4) If the certified seller is unable to provide merchandise and ser-
36 vices or acceptable substitute merchandise or services under the terms of
37 the contract, then the person responsible for arrangements for the funeral
38 of the contract beneficiary may choose another provider and the funds in the
39 trust shall be used to pay for the merchandise and services of the substitute
40 provider.