



NORTH CAROLINA BOARD OF FUNERAL SERVICE

Stephen E. Davis
Executive Director

Matt P. Staton
President

November 30, 2018

Via email only

Jt. Legislative Administrative Procedure Oversight Committee
Rep. Jonathan Jordan, Co-Chair - Jonathan.Jordan@ncleg.net
Sen. Andy Wells, Co-Chair - Andy.Wells@ncleg.net

Jt. Legislative Oversight Committee on Justice and Public Safety
Rep. James L. Boles, Jr., Co-Chair - Jamie.Boles@ncleg.net
Rep. Ted Davis, Jr., Co-Chair - Ted.Davis@ncleg.net
Sen. Shirley B. Randleman, Co-Chair - Shirley.Randleman@ncleg.net

Re: Report pursuant to S.L. 2018-69
North Carolina Board of Funeral Service

Dear Committee Co-Chairs:

Pursuant to Session Law 2018-69 titled "An Act to Assist the Criminal Law Recodification Working Group," the North Carolina Board of Funeral Service ("Board") is providing you with information regarding all crimes defined by the Board. The Board's practice act can be found in Articles 13A, 13D, 13E, and 13F of Chapter 90 of the North Carolina General Statutes, specifically §§ 90-210.18A through 90-210.135.

The references to criminal conduct in the Board's practice act, which was enacted by the N.C. General Assembly in 1901, are found as follows:

ARTICLE 13A – PRACTICE OF FUNERAL SERVICE

(Full text available at:

https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_90/Article_13A.html)

N.C. Gen. Stat. § 90-210.25(c)(12)

If any person shall engage in or hold himself out as engaging in the business of transportation or removal of a dead human body without first having received a permit under this section, the person shall be guilty of a Class 2 misdemeanor.

N.C. Gen. Stat. § 90-210.25(f)

If any person shall practice or hold himself or herself out as practicing the profession or art of embalming, funeral directing or practice of funeral service or operating a funeral establishment without having complied with the provisions of this Article, the person shall be guilty of a Class 2 misdemeanor.

ARTICLE 13D – PRENEED FUNERAL FUNDS

(Full text available at:

https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_90/Article_13D.html)

N.C. Gen. Stat. § 90-210.69(b)

The Board may administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records in any investigation conducted by it Any person who does not obey a subpoena issued by the Board shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

N.C. Gen. Stat. § 90-210.70

(a) Anyone who embezzles or who fraudulently, or knowingly and willfully misapplies, or any manner converts preneed funeral funds to his own use, or for the use of any partnership, corporation, association, or entity for any purpose other than as authorized by this Article; or anyone who takes, makes away with or secretes, with intent to embezzle or fraudulently or knowingly and willfully misapply or in any manner convert preneed funeral funds for his own use or the use of any other person for any purpose other than as authorized by this Article shall be guilty of a felony. If the value of the preneed funeral funds is one hundred thousand dollars (\$100,000) or more, violation of this section is a Class C felony. If the value of the preneed funeral funds is less than one hundred thousand dollars (\$100,000), violation of this section is a Class H felony. Each such embezzlement, conversion, or misapplication shall constitute a separate offense and may be prosecuted individually. Upon conviction, all licenses issued under this Article shall be revoked.

(b) Any person who willfully violates any other provision of this Article [related to Preneed Funeral Funds] shall be guilty of a Class 1 misdemeanor. Each such violation shall constitute a separate offense and may be prosecuted individually.

ARTICLE 13E – MUTUAL BURIAL ASSOCIATIONS

(Full text available at:

https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_90/Article_13E.html)

N.C. Gen. Stat. § 90-21(0.81)

All burial associations now operating within the State of North Carolina shall have and maintain rules and bylaws embodying the following: . . . Article 4 . . . Any secretary or secretary-treasurer who fails to file such financial report on or before February 15 of each calendar year or on or before the last day of any period of extension for the filing of such report granted by the Board to the burial association of such secretary or secretary-treasurer shall be guilty of a Class 3 misdemeanor

N.C. Gen. Stat. § 90-210.84

It shall be unlawful for any person, firm or corporation, association or organization to organize, operate, or in any way solicit members for a burial association, or for participation in any plan, scheme, or device similar to burial associations, without the written authority of the Board of Funeral Service, and any person, firm or corporation violating the provisions of this section shall be guilty of a Class 1 misdemeanor; provided, however, the Board of Funeral Service shall not withhold authority for the organization or operation of a bona fide burial association, meeting the requirements of this Article, unless it shall be found and established to the satisfaction of the Board of Funeral Service that

the person or persons applying for authority to organize and operate such bona fide burial association is disqualified or does not meet the requirements of this Article.

N.C. Gen. Stat. § 90-210.88

If any burial association or other organization or official thereof, or any person operates or allows to be operated a burial association on any plan, scheme or bylaws not in substantial compliance with the bylaws set forth in G.S. 90-210.81, the Board of Funeral Service may revoke any authority or license granted for the operation of such burial association, and any person, firm or corporation or association convicted of the violation of this section shall be guilty of a Class 1 misdemeanor.

N.C. Gen. Stat. § 90-210.89

Penalty for wrongfully inducing person to change membership. Any burial association official, agent or representative thereof or any person who shall use fraud or make any promise not part of the printed bylaws, or who shall offer any rebate, gratuity or refund to cause a member of one association to change membership to another association, shall be guilty of a Class 1 misdemeanor.

N.C. Gen. Stat. § 90-210.90

Any person or burial association official who makes or allows to be made any false entry on the books of the association with intent to deceive or defraud any member thereof, or with intent to conceal from the Board of Funeral Service or its deputy or agent, or any auditor authorized to examine the books of such association, under the supervision of the Board of Funeral Service, shall be guilty of a Class 1 misdemeanor.

N.C. Gen. Stat. § 90-210.91

Accepting applications without collecting fee and first assessment. Any burial association official, agent or representative, or any other person who shall accept any application for membership in any association without collecting the membership fee and first assessment due thereon from any such person making such an application for membership, shall be guilty of a Class 1 misdemeanor. Any burial association official, agent or representative, or any other person who shall accept an application for an additional benefit from a member of a burial association without collecting the additional membership fee and the additional assessment due thereon from any such person making such an application for an additional benefit shall be guilty of a Class 1 misdemeanor.

N.C. Gen. Stat. § 90-210.93

Any person or persons who offer free funeral services or free embalming, free ambulance service or any other thing free of charge, acting for any burial association, directly or indirectly, or who so acting shall in any way fail to assess for the amount needed to pay death losses and allowable expenses, shall be guilty of a Class 1 misdemeanor.

N.C. Gen. Stat. § 90-210.97

Any officer or employee of any burial association authorized to do business under this Article, who shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for membership or for the purpose of obtaining money or any benefit from any burial association transacting business under this Article, or who shall make any false financial statement to the

Letter to Jt. Legislative Administrative Procedure Oversight Committee and
Jt. Legislative Oversight Committee on Justice and Public Safety
re Report Pursuant to S.L. 2018-69
November 30, 2018
Page | 4

Board of Funeral Service or to the membership of the burial association of which such person is an officer or employee shall be guilty of a Class 1 misdemeanor.

ARTICLE 13F – CREMATIONS

(Full text available at:

https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_90/Article_13F.html)

N.C. Gen. Stat. § 90-123

(i) . . . In addition to the powers enumerated in Chapter 150B of the General Statutes, the Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation, or proceeding conducted by it. . . . Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor.

N.C. Gen. Stat. § 90-210.134

(c) A violation of any of the provisions of this Article is a Class 2 misdemeanor.

The full text of the Board's rules can be found at the following link:

<http://reports.oah.state.nc.us/ncac/title%2021%20-%20occupational%20licensing%20boards%20and%20commissions/chapter%2034%20-%20funeral%20service/chapter%2034%20rules.pdf>

If you require further information from the Board, please do not hesitate to contact me at (919) 715-0901 or sdavis@ncbfs.org.

Sincerely,

NORTH CAROLINA BOARD OF FUNERAL SERVICE

Stephen E. Davis

Stephen E. Davis
Executive Director

cc: Susan L. Sitze, staff attorney (Susan.sitze@ncleg.net)
Jeremy Ray (Jeremy.Ray@ncleg.net)