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COMMITTEE REPORT

March 9, 2017

**S. 185**

Introduced by Senator Shealy

S. Printed 3/9/17--S.

Read the first time January 10, 2017.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 185) to amend Section 40-19-20(1) of the 1976 Code, relating to the definition of “advertisement” as used in regard to embalmers and funeral directors, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Section 40‑19‑20 of the 1976 Code is amended to read:

“Section 40‑19‑20. As used in this chapter:

(1) ‘Advertisement’ means the publication, dissemination, circulation, or placing before the public an announcement or statement in a newspaper, magazine, or other publication in the form of a book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, or tag, or over radio, ~~or~~ television, or internet. The term does not include funeral or death notices and obituaries.

(2) ‘Aiding and abetting’ means allowing or permitting an internet service provider, unlicensed person, establishment, or entity to engage in the practice of funeral service, embalming, cremation, or conducting business as a funeral home, funeral establishment, crematory, or mortuary.

~~(2)~~(3) ‘Apprentice’ means a person who is preparing to become licensed for the practice of embalming and funeral directing under the supervision and instruction of a person licensed for the practice in this State and who is registered with the board pursuant to Section 40‑19‑120.

~~(3)~~(4) ‘Board’ means the South Carolina State Board of Funeral Service.

~~(4)~~(5) ‘Branch funeral home’ means an establishment separate and apart from the licensed parent funeral home that has embalming facilities, a chapel, a lay‑out room, or a sales room, or any combination of these.

~~(5)~~(6) ‘Cremation’ means the reduction of the dead body by intense heat to residue.

~~(6)~~(7) ‘Crematory’ means an establishment in which the dead body is reduced to residue by intense heat.

~~(7)~~(8) ‘Disposition’ means the final disposal of the body whether by earth interment, aboveground burial, cremation, burial at sea, or delivery to a medical institution for lawful dissection and experimentation or removal from the State pursuant to obtaining a burial transit permit.

~~(8)~~(9) ‘Embalmer’ means a person licensed by the board to disinfect and preserve or attempt to disinfect and preserve the dead human body, entirely or in part, by the use of application of chemicals, fluids, or gases, externally or internally, or both, by their introduction into the body by vascular or hypodermic injections, by direct application into the organs or cavities, or by other method and includes the restoration or attempted restoration of the appearance of the dead human body.

~~(9)~~(10) ‘Embalming’ means the disinfection of the dead human body by replacing certain body fluids with preserving and disinfecting chemicals.

~~(10)~~(11) ‘Funeral director’ means a person licensed by the board to engage for hire or profit in the profession of arranging, directing, or supervising funerals.

~~(11)~~(12) ‘Funeral home’, ‘funeral establishment’, or ‘mortuary’ means an establishment where the practice of funeral service and embalming is practiced. All of these establishments must include the following facilities:

(a) a chapel or parlor in which funeral services may be conducted;

(b) a preparation room equipped with a sanitary floor and necessary drainage, ventilation, necessary approved tables, hot and cold running water, and a sink separate from table drainage, instruments, and supplies for the preparation and embalming of dead human bodies;

(c) a room containing a displayed stock of at least six adult caskets and other necessary funeral supplies;

(d) at least one motor hearse for transporting casketed human remains.

~~(12)~~(13) ‘Funeral merchandise’ means that personal property used in connection with the conduct of funerals or with the transportation and final disposition of a dead human body including, but not limited to, caskets, cremation caskets, urns, and burial clothing. The term does not mean mausoleum crypts, interment receptacles preset in a cemetery, and columbarium niches.

~~(13)~~(14) ‘Funeral service’ or ‘funeral’ means a period following death in which there are religious services or other rites or ceremonies with the body of the deceased present.

~~(14)~~(15) ‘Graveside service’ means a rite or ceremony held only at graveside, which is not generally construed as the committal service which follows a funeral.

~~(15)~~(16) ‘Inspector’ means an inspector employed by the Department of Labor, Licensing and Regulation.

~~(16)~~(17) ‘Manager’ means a licensed funeral director who has been licensed in this State for at least one year, who is a fulltime regular employee, and who is responsible for and has the binding authority from the owner for the day‑to‑day management of funeral establishments or crematories including compliance with all applicable laws governed by this chapter and Chapters 7 and 8, ~~of~~ Title 32.

~~(17)~~(18) ‘Memorial service’ means a gathering of persons for a program in recognition of a death without the presence of the body of the deceased.

~~(18)~~(19) ‘Practice of funeral service’ means:

(a) engaging in providing shelter, care, and custody of the human dead;

(b) the practice of preparing the human dead by embalming or other methods for burial or other disposition;

(c) arranging for the transportation of the human dead;

(d) making arrangements at or before the time of death, financial or otherwise, including arrangements for cremation, for providing these services, or the sale of funeral merchandise, whether for present or future use; provided, that no funeral director, embalmer, funeral company, cemetery, or related entity shall charge a fee for the assignment to the funeral director, embalmer, funeral company, cemetery, or related entity of an insurance policy providing burial expenses, excluding preneed contracts as provided in Section 32‑7‑35; and

(e) engaging in the practice or performing any functions of funeral directing or embalming as presently recognized by persons engaged in these functions.

~~(19)~~(20) ‘Retail sales outlet’ means an establishment wherein funeral merchandise is sold or provided, or both, to the general public. A retail sales outlet may not contain lay‑out or chapel facilities and is restricted solely to the sale of funeral merchandise and may not handle or arrange for the handling or disposition, or both, of dead human remains and may not offer or execute preneed funeral contracts, except as authorized by Chapter 7, Title 32.

~~(20)~~(21) ‘Owner’ means a sole proprietor, partnership, limited partnership, corporation, limited liability corporation, or any business entity possessing authority and control over a funeral establishment.”

SECTION 2. Section 40-19-110(2) of the 1976 Code is amended to read:

“(2) using false or misleading advertising or using the name of an unlicensed person in connection with that of a funeral establishment~~;~~. An advertisement must include the physical address of the funeral home, funeral establishment, mortuary, or crematory where the advertised services will be provided. The board shall promulgate regulations establishing additional requirements for advertisements relating to providing funeral services, including internet advertisements;”

SECTION 3. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

THOMAS C. ALEXANDER for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on January 10, 2017**

**State Expenditure**

This bill amends the definition of advertising by embalmers and funeral directors to include the internet and expands the Department of Labor, Licensing and Regulation’s (LLR) regulatory activities in regard to third-party funeral service providers. LLR indicates this legislation will increase other fund expenditures of the South Carolina Board of Funeral Service from the licensure and regulation of third-party funeral service providers and internet advertising by embalmers and funeral directors. However, the amount of increased expenditure is undetermined since the number of additional licenses for third-party funeral service providers and the administrative, oversight, and regulatory duties for internet advertising are unknown. LLR indicates there will be no impact on the general fund or federal funds.

**State Revenue**

Section 40-1-50 specifies that Professional and Occupational Licensing programs must set fees to cover the operational expenses of their boards. Any necessary fee increase to offset the undetermined expenditures will increase other funds revenue by a corresponding amount.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 40-19-20(1) OF THE 1976 CODE, RELATING TO THE DEFINITION OF “ADVERTISEMENT” AS USED IN REGARD TO EMBALMERS AND FUNERAL DIRECTORS, BY ADDING THE TERM “INTERNET” TO THE DEFINITION OF ADVERTISEMENT; TO AMEND SECTION 40-19-20 OF THE 1976 CODE BY ADDING A DEFINITION FOR THE TERM “THIRD PARTY FUNERAL SERVICE PROVIDER”; AND TO AMEND CHAPTER 19, TITLE 40 OF THE 1976 CODE, BY ADDING SECTION 40‑19‑40, TO PROVIDE THAT THIRD PARTY FUNERAL SERVICE PROVIDERS MUST BE LICENSED BY THE STATE BOARD OF FUNERAL SERVICE, TO PROVIDE NOTICE AND DISCLOSURE REQUIREMENTS FOR THIRD PARTY FUNERAL SERVICE PROVIDER ADVERTISEMENTS, TO PROVIDE FOR LICENSE REVOCATION FOR VIOLATIONS OF THE ADVERTISING REQUIREMENTS, TO PROVIDE THAT THE STATE BOARD OF FUNERAL SERVICE SHALL PRESCRIBE THE FORMAT OF ADVERTISEMENT DISCLOSURE BY REGULATION, AND TO PROVIDE THAT THIRD PARTY FUNERAL SERVICE PROVIDERS MUST DISCLOSE TO CUSTOMERS THE NAME AND CONTACT INFORMATION OF THE FUNERAL ESTABLISHMENT THAT WILL BE IN CHARGE OF HANDLING ALL FUNERAL ARRANGEMENTS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. A. Section 40‑19‑20(1) of the 1976 Code is amended to read:

“Section 40‑19‑20. (1) ‘Advertisement’ means the publication, dissemination, circulation, or placing before the public an announcement or statement in a newspaper, magazine, or other publication in the form of a book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, or tag, or over radio, ~~or~~ television, or internet. The term does not include funeral or death notices and obituaries.”

B. Section 40‑19‑20 of the 1976 Code is amended by adding:

“(21) ‘Third party funeral service provider’ means an out‑of‑state broker, which is a licensed funeral director working through a licensed home in the state that the broker is located, that arranges, via telephone, email, mail, the internet, or by other means, for funeral services to be performed by licensed funeral directors and funeral establishments in this State.”

SECTION 2. Chapter 19, Title 40 of the 1976 Code is amended by adding:

“Section 40‑19‑40. (A) A third party funeral service provider, its officers, employees, agents, or assigns must be licensed with the State Board of Funeral Service.

(B)(1) Third party funeral service providers must disclose the following information in all advertisements:

(a) license number;

(b) address and phone number;

(c) conspicuous disclaimer if located out of state;

(d) name of owner; and

(e) list of all participating funeral establishments.

(2) The State Board of Funeral Service must revoke the license of a third party funeral service provider if the provider fails to prominently disclose the information required by subsection (B)(1).

(C) Third party funeral service providers must disclose to customers the name and contact information of the funeral establishment that will be directly providing, assisting, or otherwise participating in the practice of funeral service.

(D) The State Board of Funeral Service, by regulation, shall prescribe the format of all advertisement disclosures.”

SECTION 3. This act takes effect upon approval by the Governor.

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