

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 11-1178

BY REPRESENTATIVE(S) Looper, Fields, Labuda, Nikkel, Schafer S.,
Stephens, Todd, Vigil, Wilson;
also SENATOR(S) Williams S.

CONCERNING THE REGULATION OF PERSONS WHO DISPOSE OF HUMAN
REMAINS IN THE ORDINARY COURSE OF LAWFUL BUSINESS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 12-54-102 (1), (2), (4), (4.5), (4.7), (5), (7), (8), (9), (11) (b), (12), (14), (16), (17), and (19), Colorado Revised Statutes, are amended, and the said 12-54-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

12-54-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Alternative container" means a nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining, that is designed for the encasement of ~~dead human bodies~~ HUMAN REMAINS and is made of fiberboard, pressed wood, composition materials, or other similar materials.

(2) "Casket" means a rigid container that is designed for the

encasement of ~~dead human bodies~~ HUMAN REMAINS and is ornamented and lined with fabric.

(4) "Cremation" or "cremate" means the reduction of a ~~dead human body~~ HUMAN REMAINS to essential elements, ~~through direct exposure to intense heat~~, the processing of the remains, and the placement of the processed remains in a cremated remains container.

(4.3) "CREMATION CHAMBER" MEANS THE ENCLOSED SPACE INSIDE OF WHICH HUMAN REMAINS ARE CREMATED.

(4.5) "Cremation container" means a container in which the ~~dead human body~~ is HUMAN REMAINS ARE transported to the crematory and intended to be placed in the cremation chamber.

(4.7) "Cremationist" means a person who cremates or prepares for cremation a ~~dead human body~~ HUMAN REMAINS.

(5) "Crematory" means a building, FACILITY, or structure ~~containing one or more cremation chambers or retorts for the cremation of dead human bodies~~ WHERE HUMAN REMAINS ARE CREMATED.

(5.3) "CUSTODIAN" MEANS THE PERSON WITH POSSESSION AND CONTROL OF HUMAN REMAINS.

(7) "Embalm" or "embalming" means the disinfection and temporary preservation of ~~dead human bodies~~ HUMAN REMAINS by chemically treating the body to reduce the presence and growth of organisms, to retard organic decomposition, or to attempt restoration of the physical appearance.

(8) "Embalmer" means any person who embalms, or prepares for embalming, a ~~dead human body~~ HUMAN REMAINS for compensation.

(9) "Final disposition" means the disposition of a ~~dead human body~~ HUMAN REMAINS by entombment, burial, cremation, or removal from the state.

(11) "Funeral director" means a person who, for compensation:

(b) Prepares ~~dead human bodies~~ HUMAN REMAINS for final

disposition by means other than embalming.

(12) "Funeral establishment" means:

(a) An establishment that holds, cares for, or prepares a ~~dead human body~~ HUMAN REMAINS prior to final disposition, including ~~but not limited to~~; a crematory or embalming room; except that this paragraph (a) does not apply to establishments in which individuals regularly die;

(b) An establishment that ~~provides~~ HOLDS ITSELF OUT TO THE GENERAL PUBLIC AS PROVIDING funeral goods and services; ~~to the public;~~
~~or~~

(c) Facilities used to hold, care for, or prepare a ~~dead human body~~ HUMAN REMAINS prior to final disposition; except that this paragraph (c) does not apply to facilities in which individuals regularly die; OR

(d) AN ESTABLISHMENT THAT PROVIDES FUNERAL OR MEMORIAL SERVICES TO THE PUBLIC FOR COMPENSATION.

(14) "Funeral services" means:

(a) Preparation of ~~dead human bodies~~ HUMAN REMAINS for final disposition; except that this paragraph (a) does not apply to cremation;

(b) Arrangement, supervision, or conduct of the funeral ceremony or the final disposition of ~~dead human bodies~~ HUMAN REMAINS; or

(c) Transportation of ~~dead human bodies~~ HUMAN REMAINS to or from a funeral establishment.

(14.2) "HUMAN REMAINS" MEANS THE PHYSICAL REMAINS OF A DEAD HUMAN.

(16) "Mortuary science practitioner" means a person who, for compensation, does the following or offers to do the following:

(a) Embalms or cremates ~~dead human bodies~~ HUMAN REMAINS;

(b) Arranges, directs, or supervises funerals, memorial services, or

graveside services; or

(c) Prepares ~~dead human bodies~~ HUMAN REMAINS for final disposition.

(17) "Next of kin" means a family member or members of the deceased who, under Colorado law, have legal authority over the disposition of ~~a dead human body~~ HUMAN REMAINS.

(17.5) "OSSUARY" MEANS A RECEPTACLE USED FOR THE COMMUNAL PLACEMENT OF CREMATED REMAINS, WITHOUT USING AN URN OR OTHER CONTAINER, IN WHICH CREMATED REMAINS ARE COMMINGLED WITH OTHER CREMATED REMAINS.

(19) "Preparation of the body" means embalming, washing, disinfecting, shaving, dressing, restoring, casketing, positioning, caring for the hair of or applying cosmetics to ~~a dead human body~~ HUMAN REMAINS.

SECTION 2. 12-54-103 (1) and (2), Colorado Revised Statutes, are amended to read:

12-54-103. Funeral establishment. (1) A funeral establishment shall have the appropriate equipment and personnel to adequately provide the funeral services it contracts to provide and shall provide written notice to the consumer specifying any subcontractors OR agents ~~or other equipment and personnel providers for the funeral establishment.~~ Such notice shall be ROUTINELY HANDLING OR CARING FOR HUMAN REMAINS. TO COMPLY, THE NOTICE MUST BE given when the consumer inquires about the goods or services the funeral establishment provides and ~~shall provide~~ MUST INCLUDE the names and addresses of ~~such~~ THE subcontractors, agents, or other providers; except that, if ~~such~~ THE inquiry is over the telephone, ~~such~~ THE written notice ~~shall~~ MUST be provided ~~before~~ WHEN the customer ~~selects~~ FINALIZES THE ARRANGEMENTS FOR goods or services WITH THE FUNERAL ESTABLISHMENT.

(2) A funeral establishment shall retain all documents and records concerning the final disposition of ~~a dead human body~~ HUMAN REMAINS for at least seven years after ~~such~~ THE disposition.

SECTION 3. 12-54-104 (1) (a) and (1) (c), the introductory portion

to 12-54-104 (1) (g), and 12-54-104 (1) (j) and (1) (l), Colorado Revised Statutes, are amended to read:

12-54-104. Unlawful acts. (1) It is unlawful:

(a) To disinfect or preserve or to make final disposition of a ~~dead human body~~ HUMAN REMAINS with knowledge sufficient to arouse a reasonable suspicion of a crime in connection with the cause of death of the deceased until the permission of the coroner, deputy coroner, or district attorney, if there is no coroner, has been first obtained;

(c) For any public officer or employee or any other person having a professional relationship with the decedent to approve or cause the final disposition of a ~~dead human body~~ HUMAN REMAINS in violation of this article;

(g) To transport or otherwise transfer by common carrier a ~~dead human body~~ HUMAN REMAINS unless:

(j) To refuse to properly and promptly release a ~~dead human body~~ HUMAN REMAINS OR CREMATED REMAINS to the custody of the person who has the legal right to effect such release whether or not any costs have been paid;

(l) To embalm or cremate a ~~dead human body~~ HUMAN REMAINS without obtaining permission from the person with the right of final disposition unless otherwise required by section 12-54-105;

SECTION 4. 12-54-105, Colorado Revised Statutes, is amended to read:

12-54-105. Embalming or refrigeration of bodies required. ~~All dead human bodies kept~~ THE CUSTODIAN SHALL NOT KEEP THE HUMAN REMAINS more than twenty-four hours after death before final disposition ~~BUT shall be embalmed or shall be properly refrigerated~~ EMBALM OR PROPERLY REFRIGERATE THE BODY AFTER TWENTY-FOUR HOURS.

SECTION 5. 12-54-108 (2) and (5) (a), Colorado Revised Statutes, are amended to read:

12-54-108. Exceptions - safe harbor. (2) (a) This part 1 shall not apply to, nor in any way interfere with, any custom or rite of any religious sect in the burial of its dead, and the members and followers of ~~such~~ THE religious sect may continue to PROVIDE MEMORIAL SERVICES FOR, care for, prepare, and bury the bodies of deceased members of ~~such~~ THE religious sect, free from any term or condition, or any provision of this part 1, and are not subject to this part 1, so long as the ~~dead human body is~~ HUMAN REMAINS ARE refrigerated, frozen, embalmed, interred, or cremated within seven days after death.

(b) If a ~~dead human body is~~ HUMAN REMAINS ARE refrigerated or embalmed pursuant to paragraph (a) of this subsection (2), the body ~~shall~~ MUST be interred, frozen, or cremated within thirty days after death unless the coroner authorizes otherwise in writing. The coroner shall not permit an exception to this paragraph (b) unless the applicant can demonstrate a legitimate delay caused by unforeseen uncontrollable circumstances or by a criminal investigation.

(c) Notwithstanding ~~the provisions of~~ this subsection (2), upon the receipt of evidence that the ~~dead human body~~ HUMAN REMAINS likely contained a serious contagious disease, the state department of public health and environment, the state board of health, or a local department of health may issue an order overruling this subsection (2).

(5) (a) (I) A FUNERAL ESTABLISHMENT, funeral director, or mortuary science practitioner may dispose of cremated remains at the expense of the person with the right of final disposition one hundred eighty days after cremation if the person was given clear prior notice of this paragraph (a) and a reasonable opportunity to collect the cremated remains, the exact location of the FINAL disposition and the costs associated with the FINAL disposition are recorded, and the recovery of the cremated remains is possible. Recovery of costs ~~shall be~~ IS limited to a reasonable amount of the costs actually expended by the FUNERAL ESTABLISHMENT, funeral director, or mortuary science practitioner.

(II) A FUNERAL ESTABLISHMENT, FUNERAL DIRECTOR, OR MORTUARY SCIENCE PRACTITIONER MAY COMPLY WITH THIS PARAGRAPH (a) BY TRANSFERRING THE CREMATED REMAINS AND THE RECORDS SHOWING THE FUNERAL ESTABLISHMENT AND THE DECEASED'S NAME, DATE OF BIRTH, AND NEXT OF KIN FOR FINAL DISPOSITION TO A FACILITY OR PLACE NORMALLY

USED FOR FINAL DISPOSITION IF THE NEW CUSTODIAN CAN COMPLY WITH THIS PARAGRAPH (a).

(III) IF CREMATED REMAINS ARE NOT CLAIMED BY THE PERSON WITH THE RIGHT OF FINAL DISPOSITION WITHIN THREE YEARS AFTER CREMATION, A FUNERAL ESTABLISHMENT, FUNERAL DIRECTOR, OR MORTUARY SCIENCE PRACTITIONER MAY DISPOSE OF THE REMAINS IN AN UNRECOVERABLE MANNER BY PLACING THE REMAINS IN AN OSSUARY OR BY SCATTERING THE REMAINS IN A DEDICATED CEMETERY, SCATTERING GARDEN, OR CONSECRATED GROUND USED EXCLUSIVELY FOR THESE PURPOSES.

(IV) THE CUSTODIAN IS NOT LIABLE FOR THE LOSS OR DESTRUCTION OF RECORDS REQUIRED TO BE KEPT BY THIS PARAGRAPH (a) IF THE LOSS OR DESTRUCTION WAS NOT CAUSED BY THE CUSTODIAN'S NEGLIGENCE.

SECTION 6. 12-54-110 (2) (a) (IV) (A), (2) (a) (IV) (B), (2) (a) (IV) (C), and (5), Colorado Revised Statutes, are amended to read:

12-54-110. Registration required. (2) (a) Each funeral establishment shall register with the director using forms as determined by the director. The registration shall include, without limitation, the following:

(IV) A list of each of the following services provided at each funeral establishment location:

(A) Refrigerating or holding ~~dead human bodies~~ HUMAN REMAINS;

(B) Embalming ~~dead human bodies~~ HUMAN REMAINS;

(C) Transporting ~~dead human bodies~~ HUMAN REMAINS to or from the funeral establishment or the place of final disposition; and

(5) This section shall not require the registration of a nonprofit organization that only provides education or support to an individual who intends to provide for final disposition of a ~~dead human body~~ HUMAN REMAINS.

SECTION 7. The introductory portion to 12-54-111 (1) and 12-54-111 (1) (b) and (3) (b), Colorado Revised Statutes, are amended to

read:

12-54-111. Title protection. (1) A person shall not advertise, represent, or hold oneself out as or use the title of a mortuary science practitioner unless the ~~applicant~~ PERSON:

(b) Has graduated with a CERTIFICATE, DIPLOMA, OR degree in mortuary science from:

(I) A PROGRAM ACCREDITED BY THE AMERICAN BOARD OF FUNERAL SERVICE EDUCATION OR ITS SUCCESSOR, IF THE SUCCESSOR IS APPROVED BY THE DIRECTOR, AND THE PROGRAM IS PART OF A SCHOOL OF HIGHER EDUCATION; OR

(II) A school of higher education accredited by the American board of funeral service education or its successor, if the successor is approved by the director; and

(3) A person shall not advertise, represent, or hold oneself out as or use the title of an embalmer unless the applicant:

(b) Has embalmed at least fifty ~~dead human bodies~~ HUMAN REMAINS.

SECTION 8. 12-54-112 (1) (c), (1) (e), (2), and (3), Colorado Revised Statutes, are amended to read:

12-54-112. Standards of practice - embalming - transporting.

(1) A funeral establishment that performs embalming shall:

(c) Employ reasonable care to minimize the risk of transmitting communicable diseases from ~~dead human bodies~~ HUMAN REMAINS;

(e) Transport ~~dead human bodies~~ HUMAN REMAINS in a safe and sanitary manner.

(2) A funeral establishment that transports ~~dead human bodies~~ HUMAN REMAINS shall:

(a) Use a motor vehicle that is appropriate for the transportation of

~~a dead human body~~ HUMAN REMAINS; and

(b) Transport ~~dead human bodies~~ HUMAN REMAINS in a safe and sanitary manner.

(3) A funeral establishment shall remove any implanted device in a ~~dead human body~~ HUMAN REMAINS before transporting the body to a crematory.

SECTION 9. 12-54-301 (1) (b), (1) (f), (1) (g), (1) (i), and (1) (j), Colorado Revised Statutes, are amended to read:

12-54-301. Unlawful acts. (1) It is unlawful for a cremationist:

(b) To approve or cause the final disposition of a ~~dead human body~~ HUMAN REMAINS in violation of this article;

(f) To refuse to properly and promptly release a ~~dead human body~~ HUMAN REMAINS to the custody of the person who has the legal right to effect ~~such~~ THE release, whether or not any costs have been paid, unless there is a good faith dispute over who controls the right of final disposition;

(g) To cremate a ~~dead human body~~ HUMAN REMAINS without obtaining permission from the person with the right of final disposition;

(i) To cremate a ~~dead human body~~ HUMAN REMAINS in a facility unless the facility is registered pursuant to section 12-54-303;

(j) To refuse to accept a ~~dead human body~~ HUMAN REMAINS that is ARE not in a casket or to require a ~~dead human body~~ HUMAN REMAINS to be placed in a casket at any time;

SECTION 10. 12-54-302 (2) (a) and (3), Colorado Revised Statutes, are amended to read:

12-54-302. Exceptions - safe harbor. (2) (a) (I) A cremationist may dispose of cremains at the expense of the person with the right of final disposition one hundred eighty days after cremation if the person was given clear prior notice of this paragraph (a) and a reasonable opportunity to collect the cremains, the exact location of the FINAL disposition and the

costs associated with the FINAL disposition are recorded, and the recovery of the cremains is possible. Recovery of costs ~~shall be~~ IS limited to a reasonable amount of the costs actually expended by the cremationist.

(II) A CREMATIONIST MAY COMPLY WITH THIS PARAGRAPH (a) BY TRANSFERRING THE CREMATED REMAINS AND THE RECORDS SHOWING THE FUNERAL ESTABLISHMENT AND THE DECEASED'S NAME, DATE OF BIRTH, AND NEXT OF KIN FOR FINAL DISPOSITION TO A FACILITY OR PLACE NORMALLY USED FOR FINAL DISPOSITION IF THE NEW CUSTODIAN CAN COMPLY WITH THIS PARAGRAPH (a).

(III) IF CREMATED REMAINS ARE NOT CLAIMED BY THE PERSON WITH THE RIGHT OF FINAL DISPOSITION WITHIN THREE YEARS AFTER CREMATION, A CREMATIONIST MAY DISPOSE OF THE REMAINS IN AN UNRECOVERABLE MANNER BY PLACING THE REMAINS IN AN OSSUARY OR BY SCATTERING THE REMAINS IN A DEDICATED CEMETERY, SCATTERING GARDEN, OR CONSECRATED GROUND USED EXCLUSIVELY FOR THESE PURPOSES.

(IV) THE CUSTODIAN IS NOT LIABLE FOR THE LOSS OR DESTRUCTION OF RECORDS REQUIRED TO BE KEPT BY THIS PARAGRAPH (a) IF THE LOSS OR DESTRUCTION WAS NOT CAUSED BY THE CUSTODIAN'S NEGLIGENCE.

(3) (a) This part 3 shall not apply to, nor interfere with, any custom or rite of a religious sect in the final disposition of its dead, and the members and followers of ~~such~~ THE religious sect may continue to PROVIDE MEMORIAL SERVICES FOR, care for, prepare, and cremate the bodies of deceased members of the religious sect if the ~~dead human body~~ is HUMAN REMAINS ARE refrigerated, frozen, or cremated within seven days after death.

(b) If ~~a dead human body~~ is HUMAN REMAINS ARE refrigerated pursuant to paragraph (a) of this subsection (3), the body ~~shall~~ MUST be cremated within thirty days after death unless the coroner authorizes otherwise in writing. The coroner shall not permit an exception to this paragraph (b) unless the applicant can demonstrate a legitimate delay caused by unforeseen, uncontrollable circumstances or by a criminal investigation.

SECTION 11. 12-54-303 (2) (a) (IV) (A), (2) (a) (IV) (B), (2) (a) (IV) (D), and (5), Colorado Revised Statutes, are amended to read:

12-54-303. Registration required. (2) (a) Each crematory shall register with the director using forms as determined by the director. The registration shall include, without limitation, the following:

(IV) A list of each of the following services provided at each crematory location:

(A) Refrigerating or holding ~~dead human bodies~~ HUMAN REMAINS;

(B) Transporting ~~dead human bodies~~ HUMAN REMAINS to or from the crematory or the place of final disposition;

(D) Cremating ~~dead human bodies~~ HUMAN REMAINS.

(5) This section shall not require the registration of a nonprofit organization that only provides education or support to an individual who intends to provide for final disposition of ~~a dead human body~~ HUMAN REMAINS.

SECTION 12. 12-54-304, Colorado Revised Statutes, is amended to read:

12-54-304. Title protection. A person shall not advertise, represent, or hold oneself out as or use the title of a cremationist unless the applicant has at least five hundred hours practicing or interning as a cremationist and has cremated at least fifty ~~dead human bodies~~ HUMAN REMAINS.

SECTION 13. 12-54-307 (1) (b) and (1) (d), the introductory portion to 12-54-307 (2) (a), 12-54-307 (2) (a) (III), (2) (a) (V), (2) (a) (VII), (2) (a) (IX), (3) (a), and (3) (b), the introductory portion to 12-54-307 (3) (c), and 12-54-307 (3) (c) (I), (3) (c) (II), (4), (5) (a), and (7) (a), Colorado Revised Statutes, are amended, and the said 12-54-307 (3) (c) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

12-54-307. Standards of practice - cremating. (1) A crematory shall:

(b) Employ reasonable care to minimize the risk of transmitting

communicable diseases from ~~dead human bodies~~ HUMAN REMAINS;

(d) Transport ~~dead human bodies~~ HUMAN REMAINS in a safe and sanitary manner.

(2) (a) A crematory shall not cremate a ~~dead human body~~ HUMAN REMAINS unless the crematory has obtained a statement containing the following from a funeral establishment, funeral director, mortuary science practitioner, or the person with the right of final disposition:

(III) Authorization to cremate the ~~dead human body~~ HUMAN REMAINS;

(V) A statement that the ~~dead human body does~~ HUMAN REMAINS DO not contain an implanted device;

(VII) A list of items delivered to the crematory along with the ~~dead human body~~ HUMAN REMAINS;

(IX) A copy of the ~~death certificate~~ DISPOSITION PERMIT; and

(3) (a) The ~~dead human body~~ CREMATORY shall ~~be held~~ HOLD HUMAN REMAINS in a cremation container and shall not ~~be removed~~ REMOVE THE REMAINS.

(b) The ~~dead human body~~ CREMATORY shall ~~be cremated~~ CREMATE THE HUMAN REMAINS in a cremation container.

(c) A cremation container shall MUST:

(I) Be composed of ~~combustible~~ materials suitable for cremation;

(II) Be able to be closed in order to provide a complete covering for the ~~dead human body~~ HUMAN REMAINS;

(VI) BE USED EXCLUSIVELY FOR THE CREMATION OF HUMAN REMAINS.

(4) A crematory shall not cremate ~~more than one dead human body~~ THE HUMAN REMAINS OF MORE THAN ONE PERSON within the same cremation

chamber or otherwise commingle the cremains of multiple ~~dead human bodies~~ HUMAN REMAINS unless the next of kin has signed a written authorization. No crematory ~~shall be held~~ IS civilly liable for commingling the cremains of ~~dead human bodies~~ HUMAN REMAINS if the next of kin has signed ~~such~~ THE written authorization.

(5) (a) A crematory shall use a tag to identify a ~~dead human body~~ HUMAN REMAINS and cremains. The tag ~~shall~~ MUST be verified, removed, and placed near the cremation chamber control panel prior to cremation. The tag ~~shall~~ MUST remain next to the cremation chamber until the cremation is complete.

(7) (a) A crematory shall not cremate a ~~dead human body~~ HUMAN REMAINS containing an implanted device. If the funeral establishment that had control of the ~~dead human body~~ HUMAN REMAINS failed to ensure that a device was removed, the funeral establishment ~~shall be~~ IS responsible for removing the device.

SECTION 14. 12-54-401 (1) (b), Colorado Revised Statutes, is amended to read:

12-54-401. Powers and duties of the director - rules. (1) The director may deny, suspend, refuse to renew, issue a letter of admonition or confidential letter of concern to, revoke, place on probation, or limit the scope of practice of the registration of a funeral establishment or crematory under this article that has:

(b) Had a registration issued by Colorado, or an equivalent license, registration, or certification issued by another state, to practice mortuary science or to embalm or cremate a ~~dead human body~~ HUMAN REMAINS revoked; or

SECTION 15. Act subject to petition - effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be

held in November 2012 and shall take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to acts committed on or after the applicable effective date of this act.

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO