

MINUTES
South Carolina State Board of Funeral Service
Committee Meeting

3:00 p.m., February 21, 2017
Synergy Business Park
110 Centerview Drive, Kingstree Building Room 108
Columbia, South Carolina

Tuesday, February 21, 2017

1. Meeting Called to Order

The South Carolina State Board of Funeral Service Legislative Committee meeting was called to order on February 21, 2017, at 3:02 p.m. by William Horton, Jr., of Kingstree. Other Committee members present for the meeting included: Stephen Lee McMillan, Jr. of Myrtle Beach, and Charvis K. Gray, of Piedmont, who conferenced in by telephone.

Staff member participating in the meeting included: Donnell Jennings, Advice Counsel, Office of Advice Counsel; Holly Beeson, Office of Communication and Government Affairs; Amy Holleman, Board Administrator; Ernest Adams, Inspector, Office of Investigations and Enforcement; and Norma McAllister, Program Assistant.

The meeting was not attended by members of the public.

A. Public Notice

Mr. Horton announced that public notice of this meeting was properly posted at the South Carolina State Board of Funeral Service office, Synergy Business Park, Kingstree Abuilding, and provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act.

B. Pledge of Allegiance

All present recited the Pledge of Allegiance.

2. Introduction of Board Members and Persons Attending the Meeting

The Committee members, and staff, introduced themselves.

3. Approval of Excused Absence

All members were present. Ms. Holly Beeson joined the meeting at 3:14 p.m.

4. Discussion of Senate Bill 185 – Third Party Funeral Service Providers

SENATE BILL 185 General Bill Sponsors: Senator Shealy

Introduced in the Senate on January 10, 2017, and currently residing in the Senate Committee on Labor, Commerce and Industry.

- 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 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.

The Board, at the January 31, 2017 meeting, expressed concerns with Senate Bill 185, especially the definition of “Third Party Funeral Service Provider.” Mr. Nelson recommended, and it was approved by the Board, that a committee, made up of Mr. Horton, Mr. McMillan, and Mr. Gray, be formed to work with the Board Administrator, Amy Holleman, Advice Counsel, Donnell Jennings, and Ms. Beeson on clarifying the language.

Ms. Holleman provided an overview of the creation of Senate Bill 185 and its purpose to protect the public. Ms. Holleman stated one of Senator Shealy’s constituents contacted her about their problems with an online third party funeral service providers offering cremation services, which resulted in the introduction of Senate Bill 185.

Ms. Holleman stated Senate Bill 185 includes in 40-19-20(1), adding the term, “internet,” to the definition of advertisement; amending 40-19-20 by adding a definition for “Third Party Funeral Service Provider;” and adding Section 40-19-40, which says that Third Party Funeral Service Providers must be licensed by the State Board of Funeral Service, provides notice and disclosure requirements for advertisements, and requires license revocation for violations of the advertising requirements.

The Committee and staff discussed whether or not the language proposed is enforceable and whether or not the current law already provides for the protection of the public as it allows the Board to sanction its licensees for aiding and abetting unlicensed practice and for things such as employing cappers and steerers and paying, directly or indirectly, a commission to those who help the funeral directors gain business.

The Committee made the following preliminary findings, and recommendations:

1. The Committee agreed with the amendment to Section 40-19-20(1), adding the term, “Internet“ to the definition of advertisement.
2. The Committee stated the South Carolina Board of Funeral Service does not have jurisdiction outside of the State of South Carolina.
3. The Committee determined that if Section 40-19-21 is deleted since the Board does not have out-of-state jurisdiction, then Section 40-19-40 would not be needed.
4. The Committee stated the best course of action may be reinforcing/strengthening, existing statutes to discourage South Carolina State Board of Funeral Service licensee from conducting business with an out-of-state “Third Party Service Providers:”
 - A. 40-19-110(4) employing persons known as “cappers” or “steerers” or “solicitors” or other persons to obtain business for the licensee by better defining “cappers”, “steerers” and “solicitors” and better defining the word “employing.”
 - B. 40-19-110(6) directly or indirectly paying or offering to pay a commission by a licensee or a licensee’s agents, assistants, or employees to secure business
 - C. 40-19-110(7) aiding or abetting an unlicensed person to engage in the practice of funeral service; (Define the words aiding or abetting in the Practice Act)
 - D. 40-19-110-(15) permitting an unlicensed person to engage in the practice of funeral

service (Most online services do not have licensed funeral personnel)

5. The Committee stated misleading advertisements by out-of-state providers can be referred to the Federal Trade Commission
6. The Committee stated there are two third-party funeral services business models that are being used: business to business and business to the public.
7. The Committee recommended that the Bill be structured not to harm the Funeral Service profession, and to protect the public.
9. The Committee recommended, if the Senate Bill 185 continues to be introduced as is, that the term "out-of-state broker" in 40-19-21 be removed, that the "Third party funeral service provider be defined; that in Section 40-19-40(A) that it be written "A third party funeral service provider located in South Carolina; that in 40-19-40(B)(2) the wording be changed to state, "The State Board of Funeral Service may".
8. The Committee recommended that the Administrator research and contact her colleagues in the states of North Carolina, Georgia, Florida, Tennessee, Virginia, and Alabama regarding its state laws/statutes on aiding and abetting an unlicensed person and whether or not they have any statutes or regulations pertaining to third-party funeral services providers and/or have issued any public orders on those practicing as such. Ms. Holleman stated will email the results to Donnell Jennings and Holly Beeson.

In conclusion, the Committee requested additional time to research, present concerns, provide findings, and recommendations pertaining to Senate Bill 185.

5. Executive Session for Legal Advice, if needed

6. Public Comments (no votes taken)

No comments were made by the public.

7. Adjournment

MOTION

Mr. McMillan made a motion to adjourn the meeting,
Mr. Gray seconded, and the motion passed unanimously.

Mr. Horton, after ensuring there being no further business to discuss, adjourned the February 21, 2017 Committee meeting for the South Carolina State Board of Funeral Service at 4:06 p.m.

The next meeting of the South Carolina Board of Funeral Service is scheduled for March 28, 2017 at 10:00 a. m., at Synergy Business Park, 110 Centerview Drive, Kingstree Building, Room 108, Columbia, South Carolina.