

AMENDMENTS TO LB 1021

1 1. Insert the following new sections:

2 "Section 1. Sections 1 to 31 of this act shall be known
3 and may be cited as the Cremation of Human Remains Act.

4 Sec. 2. For purposes of the Cremation of Human Remains
5 Act, unless the context otherwise requires:

6 (1) Alternative container means a container in which
7 human remains are placed in a cremation chamber for cremation. An
8 alternative container shall:

9 (a) Be composed of readily combustible materials suitable
10 for cremation;

11 (b) Be able to be closed to provide for complete
12 encasement of the human remains;

13 (c) Be resistant to leakage or spillage;

14 (d) Be rigid enough for easy handling; and

15 (e) Provide protection for the health and safety of
16 persons handling such container;

17 (2) Authorizing agent means a person vested with the
18 right to control the disposition of human remains pursuant to
19 section 71-1339;

20 (3) Casket means a rigid container made of wood, metal,
21 or other similar material, ornamented and lined with fabric, which
22 is designed for the encasement of human remains;

23 (4) Cremated remains means the residue of human remains
24 recovered after cremation and the processing of such remains by

1 pulverization, leaving only bone fragments reduced to
2 unidentifiable dimensions, and the unrecoverable residue of any
3 foreign matter, such as eyeglasses, bridgework, or other similar
4 material, that was cremated with the human remains;

5 (5) Cremated remains receipt form means a form provided
6 by a crematory authority to an authorizing agent or his or her
7 representative that identifies cremated remains and the person
8 authorized to receive such remains. The form shall include the
9 name of the deceased, the date, time, and place of receipt of the
10 cremated remains, and the signatures of the owner of the crematory
11 or his or her representative and the authorizing agent or his or
12 her representative;

13 (6) Cremation means the technical process that uses heat
14 and evaporation to reduce human remains to bone fragments;

15 (7) Cremation chamber means the enclosed space within
16 which a cremation takes place;

17 (8) Crematory means a building or portion of a building
18 which contains a cremation chamber and holding facility;

19 (9) Crematory authority means the legal entity subject to
20 licensure by the department to maintain and operate a crematory and
21 perform cremation;

22 (10) Crematory operator means a person who is responsible
23 for the operation of a crematory;

24 (11) Delivery receipt form means a form provided by a
25 funeral establishment to a crematory authority to document the
26 receipt of human remains by such authority for the purpose of
27 cremation. The form shall include the name of the deceased, the

1 time and date of delivery of such remains, and the signatures of
2 the owner of the crematory or his or her representative and the
3 funeral director or his or her representative;

4 (12) Department means the Department of Health and Human
5 Services Regulation and Licensure;

6 (13) Director means the Director of Regulation and
7 Licensure;

8 (14) Funeral director has the same meaning as in section
9 71-507;

10 (15) Funeral establishment has the same meaning as in
11 section 71-1301;

12 (16) Holding facility means the area of a crematory
13 designated for the retention of human remains prior to cremation.

14 A holding facility shall be designed and constructed to:

15 (a) Comply with all applicable public health laws;

16 (b) Provide for the health and safety of persons employed
17 at such facility; and

18 (c) Prevent any unauthorized access to such facility;

19 (17) Human remains means the body of a deceased person,
20 or a human body part, in any stage of decomposition and includes
21 limbs or other portions of the anatomy that are removed from a
22 person or human remains for medical purposes during treatment,
23 surgery, biopsy, autopsy, or medical research; and

24 (18) Temporary container means a receptacle made of
25 cardboard, plastic, or other similar material in which cremated
26 remains are placed prior to the placement of such remains in an urn
27 or other permanent container.

1 Sec. 3. A crematory shall not be established, operated,
2 or maintained in this state except by a crematory authority
3 licensed by the department under the Cremation of Human Remains
4 Act. The department shall issue a license to a crematory authority
5 that satisfies the requirements for licensure under the act. Human
6 remains shall not be cremated in this state except at a crematory
7 operated by a crematory authority licensed under the act.
8 Crematory authorities operating crematories on the operative date
9 of this act which apply for licensure within sixty days after the
10 operative date of this act shall be presumed to meet requirements
11 for initial or provisional licensure under the act.

12 Sec. 4. (1) A crematory shall conform to all building
13 codes and environmental standards or shall be exempt from such
14 requirements because the crematory was established prior to the
15 operative date of this act.

16 (2) A crematory may be constructed on the property of or
17 property adjacent to any cemetery or funeral establishment that is
18 properly zoned commercial or industrial or at any other location
19 consistent with applicable zoning and environmental regulations.

20 Sec. 5. An applicant for an initial or renewal license
21 as a crematory authority shall file a written application with the
22 department. The application shall be accompanied by the license
23 fee required under section 9 of this act and shall set forth the
24 full name and address of the applicant, the address and location of
25 the crematory, the name of the crematory operator, a certificate
26 confirming that the crematory operator has attended, prior to
27 issuance of the license, a training course provided by the

1 Cremation Association of North America or by the manufacturer of
2 the cremation chamber maintained and operated by the crematory
3 authority, the name and address of the owner of the crematory, and
4 additional information as required by the department, including
5 affirmative evidence of the applicant's ability to comply with
6 rules and regulations adopted and promulgated under the Cremation
7 of Human Remains Act. The application shall include the
8 applicant's social security number if the applicant is an
9 individual. The social security number shall not be public record
10 and may only be used for administrative purposes.

11 Sec. 6. Except as otherwise provided in the Cremation of
12 Human Remains Act, licenses issued pursuant to the act shall expire
13 five years after the date of issuance. Licenses shall be issued
14 only for the crematory authority named in the application and shall
15 not be transferable or assignable.

16 Sec. 7. (1) A crematory authority desiring to relocate a
17 crematory shall file a written application with the department at
18 least thirty days prior to the designated date of such relocation.
19 The application for relocation shall be accompanied by a fee of not
20 less than fifteen dollars and not more than one hundred fifty
21 dollars.

22 (2) A crematory authority desiring to change ownership of
23 a crematory shall file a written application with the department at
24 least thirty days prior to the designated date of such change. The
25 application shall be accompanied by a fee of not less than fifteen
26 dollars and not more than one hundred fifty dollars.

27 (3) A crematory authority desiring to change its name

1 shall file a written application with the department at least
2 thirty days prior to such change. The application shall be
3 accompanied by a fee of ten dollars.

4 Sec. 8. A provisional license may be issued to a
5 crematory authority that substantially complies with requirements
6 for licensure under the Cremation of Human Remains Act and rules
7 and regulations adopted and promulgated under the act. Such
8 provisional license shall be valid for a period of up to one year,
9 shall not be renewed, and may be converted to a regular license
10 upon a showing that the crematory authority fully complies with the
11 requirements for licensure under the act and rules and regulations.

12 Sec. 9. (1) The fee for an initial or a renewal license
13 as a crematory authority shall include a base fee of fifty dollars
14 and an additional fee of up to three hundred dollars, as determined
15 by the department in rules and regulations.

16 (2) If the license application is denied, the license fee
17 shall be returned to the applicant, except that the department may
18 retain up to twenty-five dollars as an administrative fee and may
19 retain the entire license fee if an inspection has been completed
20 prior to such denial.

21 (3) The department shall collect the fee provided in
22 subsection (1) of this section for reinstatement of a license that
23 has lapsed or has been suspended or revoked. The department shall
24 collect a fee of ten dollars for a duplicate original license.

25 (4) In addition to license fees provided in this section,
26 the department shall collect a fee of twenty-five dollars for a
27 certified statement that a crematory authority is licensed in this

1 state and a fee of five dollars for verification that a crematory
2 authority is licensed in this state.

3 (5) The department shall adopt and promulgate rules and
4 regulations for the establishment of fees under the act.

5 (6) The department shall collect all fees authorized
6 under the act and shall remit such fees to the State Treasurer for
7 credit to the Department of Health and Human Services Regulation
8 and Licensure Cash Fund. Such fees shall only be used for
9 activities related to the licensure of crematory authorities.

10 Sec. 10. (1) The department may inspect or provide for
11 the inspection of any crematory operated by a crematory authority
12 licensed under the Cremation of Human Remains Act in such manner
13 and at such times as provided in rules and regulations adopted and
14 promulgated by the department.

15 (2) The department shall issue an inspection report and
16 provide a copy of the report to the crematory authority within ten
17 working days after the completion of an inspection. The department
18 shall review any findings of noncompliance contained in such report
19 within twenty working days after such inspection.

20 (3) If the department determines, after such review, that
21 the evidence supports a finding of noncompliance by a crematory
22 authority with any applicable provisions of the Cremation of Human
23 Remains Act or rules and regulations adopted and promulgated under
24 the act, the department may send a letter to the crematory
25 authority requesting a statement of compliance. The letter shall
26 include a description of each alleged violation, a request that the
27 crematory authority submit a statement of compliance within ten

1 working days, and a notice that the department may take further
2 action if the statement of compliance is not submitted. The
3 statement of compliance shall indicate any actions by the crematory
4 authority which have been or will be taken and the period of time
5 estimated to be necessary to correct each alleged violation. If
6 the crematory authority fails to submit such statement of
7 compliance or fails to make a good faith effort to correct the
8 alleged violations, the department may take further action as
9 provided in sections 12 to 15 of this act.

10 Sec. 11. (1) Any person may submit a complaint to the
11 department and request investigation of an alleged violation of the
12 Cremation of Human Remains Act or rules and regulations adopted and
13 promulgated under the act. The department shall review all
14 complaints and determine whether to conduct an investigation
15 relating to such complaints.

16 (2) A complaint submitted to the department under this
17 section shall be confidential. A person submitting such complaint
18 shall be immune from criminal or civil liability of any nature,
19 whether direct or derivative, for submitting the complaint or for
20 disclosure of documents, records, or other information to the
21 department relating to such complaint.

22 Sec. 12. (1) If the director determines that a crematory
23 authority is operating a crematory so as to create an imminent
24 danger of death or serious physical harm to persons employed at or
25 in proximity to such crematory, he or she may order the temporary
26 suspension or temporary limitation of the license of the crematory
27 authority and may order the temporary closure of the crematory

1 pending further action by the department. A hearing shall be held
2 by the department no later than ten days after the date of such
3 order. The department shall also simultaneously institute
4 proceedings for revocation, suspension, or limitation of the
5 license of the crematory authority.

6 (2) A continuance of the hearing under subsection (1) of
7 this section shall be granted by the department upon written
8 request from the crematory authority. Such continuance shall not
9 exceed thirty days. A temporary suspension or temporary limitation
10 order by the director shall take effect when served upon the
11 crematory authority.

12 (3) A temporary suspension or temporary limitation under
13 this section shall not exceed ninety days. If further action is
14 not taken by the department within such period, the temporary
15 suspension or temporary limitation shall expire.

16 (4) Any party aggrieved by a decision of the department
17 after a hearing as provided in this section may appeal. The appeal
18 shall be in accordance with the Administrative Procedure Act.

19 Sec. 13. The department may deny or refuse to renew a
20 license under the Cremation of Human Remains Act or take
21 disciplinary action against a crematory authority licensed under
22 the act as provided in section 14 of this act on any of the
23 following grounds:

24 (1) Violation of the Cremation of Human Remains Act or
25 rules and regulations adopted and promulgated under the act;

26 (2) Conviction of any crime involving moral turpitude;

27 (3) Conviction of a misdemeanor or felony under state

1 law, federal law, or the law of another jurisdiction which, if
2 committed within this state, would have constituted a misdemeanor
3 or felony and which has a rational connection with the fitness or
4 capacity of the crematory authority to operate a crematory;

5 (4) Conviction of a violation of the act pursuant to
6 section 17 of this act;

7 (5) Committing or permitting, aiding, or abetting the
8 commission of any unlawful act;

9 (6) Obtaining a license as a crematory authority by false
10 representation or fraud;

11 (7) Misrepresentation or fraud in the operation of a
12 crematory; or

13 (8) Failure to allow access by an agent or employee of
14 the Department of Health and Human Services, the Department of
15 Health and Human Services Finance and Support, or the Department of
16 Health and Human Services Regulation and Licensure to a crematory
17 operated by the crematory authority for the purposes of inspection,
18 investigation, or other information collection activities necessary
19 to carry out the duties of such department.

20 Sec. 14. (1) The department may impose any one or more
21 of the following types of disciplinary action against a crematory
22 authority licensed under the Cremation of Human Remains Act:

23 (a) A fine not to exceed five hundred dollars per
24 violation;

25 (b) A limitation on the license and upon the right of the
26 crematory authority to operate a crematory to the extent, scope, or
27 type of operation, for such time, and under such conditions as the

1 director finds necessary and proper;

2 (c) Placement of the license on probation for a period
3 not to exceed two years during which the crematory may continue to
4 operate under terms and conditions fixed by the order of probation;

5 (d) Suspension of the license for a period not to exceed
6 two years during which the crematory may not operate; and

7 (e) Revocation and permanent termination of the license.

8 (2) Any fine imposed and unpaid under the Cremation of
9 Human Remains Act shall constitute a debt to the State of Nebraska
10 which may be collected in the manner of a lien foreclosure or sued
11 for and recovered in any proper form of action in the name of the
12 State of Nebraska in the district court of the county in which the
13 crematory is located. The department shall, within thirty days
14 after receipt, remit any such fines to the State Treasurer for
15 credit to the permanent school fund.

16 Sec. 15. Any party to a decision of the department under
17 the Cremation of Human Remains Act may appeal such decision. The
18 appeal shall be in accordance with the Administrative Procedure
19 Act.

20 Sec. 16. (1) If the license of a crematory authority has
21 lapsed for nonpayment of fees, such license shall be eligible for
22 reinstatement at any time upon application to the department and
23 payment of the applicable fee as provided in section 9 of this act.

24 (2) If the license of a crematory authority has been
25 placed on probation, such license shall be eligible for
26 reinstatement at the end of the period of probation upon successful
27 completion of an inspection if the department determines an

1 inspection is warranted.

2 (3) If the license of a crematory authority has been
3 suspended, such license shall be eligible for reinstatement at the
4 end of the period of suspension upon successful completion of an
5 inspection and payment of the applicable fee as provided in section
6 9 of this act.

7 (4) If the license of a crematory authority has been
8 suspended, such license may be reinstated by the department prior
9 to the completion of the term of suspension upon petition by the
10 licensee. After reviewing such petition and any material submitted
11 by the licensee with such petition, the department may order an
12 inspection or investigation of the licensee. Based on such review
13 and such inspection or investigation, if any, the director shall
14 (a) grant full reinstatement of the license, (b) modify the
15 suspension, or (c) deny the petition for reinstatement. The
16 director's decision shall become final thirty days after mailing
17 the decision to the licensee unless the licensee requests a hearing
18 within such period. Any requested hearing shall be held according
19 to rules and regulations of the department for administrative
20 hearings in contested cases. Any party aggrieved by a decision of
21 the department after a hearing as provided under this section may
22 appeal. The appeal shall be in accordance with the Administrative
23 Procedure Act.

24 (5) If the license of a crematory authority has been
25 revoked, such crematory authority shall not be eligible for
26 relicensure until two years after the date of such revocation. A
27 reapplication for an initial license may be made by the crematory

1 authority at the end of such two-year period.

2 (6) The department may adopt and promulgate rules and
3 regulations to carry out this section.

4 Sec. 17. (1) Maintaining or operating a crematory in
5 violation of the Cremation of Human Remains Act or any rules and
6 regulations of the department adopted and promulgated under the act
7 is a public nuisance and may be abated as a nuisance as provided by
8 law.

9 (2) (a) Establishing, operating, or maintaining a
10 crematory subject to the Cremation of Human Remains Act without
11 being licensed as a crematory authority under the act, (b) holding
12 oneself out to the public as a crematory authority without being
13 licensed under the act, or (c) performing a cremation without a
14 cremation authorization form signed by the authorizing agent and a
15 completed permit for transit or cremation as provided by the
16 department or a cremation permit, is a Class III misdemeanor.

17 (3) Signing a cremation authorization form with actual
18 knowledge that the form contains false, incorrect, or misleading
19 information is a Class III misdemeanor.

20 (4) A violation of any other provision of the Cremation
21 of Human Remains Act is a Class III misdemeanor.

22 Sec. 18. The department may maintain an action in the
23 name of the State of Nebraska for an injunction against any person
24 for establishing, operating, or maintaining a crematory without
25 first obtaining a license as a crematory authority under the
26 Cremation of Human Remains Act. In charging any defendant in a
27 complaint in such action, it shall be sufficient to charge that

1 such defendant did, upon a certain day and in a certain county,
2 establish, operate, or maintain a crematory without obtaining a
3 license as a crematory authority under the act, without alleging
4 any further or more particular facts concerning the same.

5 Sec. 19. The right to authorize the cremation of human
6 remains and the final disposition of the cremated remains, except
7 in the case of a minor subject to section 23-1824 and unless other
8 directions have been given by the decedent in the form of a
9 testamentary disposition or a pre-need contract, vests pursuant to
10 section 71-1339.

11 Sec. 20. (1) A crematory authority upon receiving human
12 remains shall sign a delivery receipt form and shall hold the human
13 remains, prior to cremation, as provided in this section.

14 (2) If a crematory authority is unable to cremate the
15 human remains immediately upon taking receipt thereof, the
16 crematory authority shall place the human remains in a holding
17 facility.

18 (3) A crematory authority may refuse to accept for
19 holding a cremation container from which there is any evidence of
20 leakage of the body fluids from the human remains therein.

21 (4) If human remains received by the crematory authority
22 are not embalmed, such remains shall be held no longer than
23 twenty-four hours from the time of death unless the human remains
24 are placed within a refrigerated facility in accordance with the
25 laws of this state.

26 Sec. 21. (1) No unauthorized person shall be permitted
27 in a crematory while any human remains are in the crematory

1 awaiting cremation, being cremated, or being removed from the
2 cremation chamber.

3 (2) The human remains of more than one person shall not
4 be simultaneously cremated within the same cremation chamber unless
5 the crematory authority has received specific written authorization
6 from the authorizing agent for the human remains to be so cremated.

7 Sec. 22. (1) A crematory authority shall not accept
8 human remains for cremation without a proper label indicating the
9 name of the deceased and the name and location of the funeral
10 establishment placed on the exterior of the alternative container
11 or casket.

12 (2) No crematory authority shall make or enforce any
13 rules requiring that human remains be placed in a casket before
14 cremation or that human remains be cremated in a casket, nor shall
15 the crematory authority refuse to accept human remains for
16 cremation if the human remains are not in a casket.

17 (3) No crematory authority shall accept human remains for
18 cremation unless the human remains are delivered to the crematory
19 authority in an alternative container or casket or delivered to the
20 crematory authority's holding facility to be placed in an
21 alternative container or casket. Human remains delivered to a
22 crematory in an alternative container shall not be removed from the
23 alternative container, and the alternative container shall be
24 cremated with the human remains. A crematory authority may refuse
25 a noncombustible casket or any other container that is not an
26 alternative container or a casket or container that is not labeled
27 as required under subsection (1) of this section.

1 Sec. 23. (1) A crematory authority shall not cremate
2 human remains until it has received:

3 (a) A cremation authorization form as provided in
4 subsection (2) of this section;

5 (b) A completed and executed permit for transit or
6 cremation as provided by the department or the appropriate
7 cremation permit from the state from which the human remains were
8 delivered, indicating that the human remains are to be cremated;
9 and

10 (c) A delivery receipt form.

11 (2) A cremation authorization form shall be signed by the
12 authorizing agent and shall contain, but not be limited to, the
13 following information:

14 (a) The name of the deceased;

15 (b) Date and place of death;

16 (c) The identity of the funeral director involved in the
17 preparation of the human remains for cremation, if any;

18 (d) Notification that the death did or did not occur from
19 a disease declared by the department to be infectious, contagious,
20 communicable, or dangerous to the public health;

21 (e) The name of the authorizing agent and the
22 relationship between the authorizing agent and the deceased;

23 (f) Authorization by the authorizing agent for the
24 crematory authority to cremate the human remains;

25 (g) A representation that the authorizing agent is aware
26 of no objection to the human remains being cremated by any person
27 who has a right to control the disposition of the human remains;

1 (h) A representation that the human remains do not
2 contain any material, implants, or conditions that may be
3 potentially hazardous to equipment or persons performing the
4 cremation;

5 (i) The name of the person authorized to claim the
6 cremated remains from the crematory authority; and

7 (j) The disposition of the cremated remains.

8 (3) A crematory authority shall retain, for at least
9 seven years after the cremation, in printed or electronic format,
10 copies of the cremation authorization form, permit for transit or
11 cremation as provided by the department or cremation permit,
12 cremated remains receipt form, delivery receipt form, and any other
13 records required under the Cremation of Human Remains Act.

14 Sec. 24. (1) Any person signing a cremation
15 authorization form shall be deemed to warrant the truthfulness of
16 any facts set forth on such form, including the identity of the
17 deceased whose remains are sought to be cremated and the authority
18 of the person to authorize such cremation. Any person signing a
19 cremation authorization form is personally liable for all damages
20 resulting from false, incorrect, or misleading information
21 contained on such form.

22 (2) A crematory authority may cremate human remains upon
23 the receipt of a cremation authorization form signed by an
24 authorizing agent and a completed permit for transit or cremation
25 or cremation permit as required by law.

26 Sec. 25. (1) No human remains shall be cremated with the
27 knowledge that the human remains contain a pacemaker or

1 defibrillator or other potentially hazardous implant or condition.
2 The authorizing agent shall take all necessary steps to ensure that
3 any such hazardous implant or condition is removed or corrected
4 prior to cremation. If an authorizing agent informs the funeral
5 director and the crematory authority on the cremation authorization
6 form of the presence of such potentially hazardous implant or
7 condition in the human remains, the funeral director shall ensure
8 that all necessary steps have been taken to remove or correct the
9 implant or condition before delivering the human remains to the
10 crematory. A funeral director who knowingly fails to ensure the
11 removal or correction of the hazardous implant or condition prior
12 to delivery and who knowingly delivers such human remains shall be
13 liable for any damages resulting from such failure. If human
14 remains with hazardous implants or conditions are in the custody of
15 a crematory authority, such authority shall have the hazardous
16 implants or conditions removed or corrected by a licensed embalmer
17 at a funeral establishment within an embalming preparation room or
18 at a medical facility by appropriate medical personnel.

19 (2) No human remains shall be cremated with the knowledge
20 that the human remains contain jewelry or other valuables. The
21 authorizing agent shall take all necessary steps to ensure that any
22 jewelry or other valuables are removed prior to cremation. If an
23 authorizing agent informs the funeral director and the crematory
24 authority on the cremation authorization form of the presence of
25 jewelry or other valuables on the human remains, the funeral
26 director shall ensure that all necessary steps have been taken to
27 remove the jewelry or other valuables before delivering the human

1 remains to the crematory. A funeral director who knowingly fails
2 to ensure the removal of the jewelry or other valuables prior to
3 delivery and who knowingly delivers such human remains shall be
4 liable for any damages resulting from such failure. If human
5 remains with jewelry or other valuables are in the custody of a
6 crematory authority, such authority shall provide for the removal
7 of such jewelry or other valuables by a licensed embalmer or his or
8 her agent.

9 Sec. 26. (1) If a crematory authority or funeral
10 establishment (a) is aware of any dispute concerning the cremation
11 of human remains, or (b) has a reasonable basis to believe that
12 such a dispute exists or to question any of the representations
13 made by the authorizing agent with respect to such remains, the
14 crematory authority or funeral establishment may refuse to accept
15 such human remains for cremation or to perform a cremation of such
16 remains until the crematory authority receives a court order that a
17 dispute with respect to such remains has been settled.

18 (2) If a crematory authority or funeral establishment is
19 aware of any dispute concerning the release or disposition of
20 cremated remains, the crematory authority or funeral establishment
21 may refuse to release cremated remains until the dispute has been
22 resolved or the crematory authority or funeral establishment has
23 been provided with a court order authorizing the release or
24 disposition of the cremated remains.

25 Sec. 27. (1) Upon completion of the cremation, and in so
26 far as is possible, all of the recoverable residue of the cremation
27 shall be removed from the cremation chamber. In so far as is

1 possible, any foreign matter or anything other than bone fragments
2 shall be removed from such residue and shall be disposed of by the
3 crematory authority. The remaining bone fragments shall be
4 processed by pulverization so as to reduce the fragments to
5 unidentifiable particles. This subsection shall not apply when the
6 commingling of human remains during cremation is otherwise
7 authorized by law. The presence of incidental and unavoidable
8 residue in the cremation chamber from a prior cremation is not a
9 violation of this subsection.

10 (2) The cremated remains with proper identification shall
11 be placed in a temporary container or permanent container selected
12 or provided by the authorizing agent. The cremated remains shall
13 not be contaminated with any other object unless specific written
14 authorization to the contrary has been received from the
15 authorizing agent.

16 (3) If the entirety of the cremated remains will not fit
17 within a temporary container or permanent container, then the
18 remainder of such remains shall be returned to the authorizing
19 agent or his or her representative in a separate container with
20 proper identification.

21 (4) If the cremated remains are to be shipped, the
22 temporary container or permanent container shall be packed securely
23 in a suitable shipping container that complies with the
24 requirements of the shipper. Unless otherwise directed in writing
25 by the authorizing agent, cremated remains shall be shipped only by
26 a method which includes an internal tracking system and which
27 provides a receipt signed by the person accepting delivery of such

1 remains.

2 Sec. 28. (1) The authorizing agent is responsible for
3 the final disposition of the cremated remains. If, after a period
4 of sixty days after the date of cremation, the authorizing agent or
5 his or her representative has not directed or otherwise arranged
6 for the final disposition of the cremated remains or claimed the
7 cremated remains for final disposition as provided in this section,
8 the crematory authority or the funeral establishment in possession
9 of the cremated remains may dispose of the cremated remains after
10 making a reasonable attempt to contact the authorizing agent or his
11 or her representative. This method of disposition may be used by
12 any crematory authority or funeral establishment to dispose of all
13 cremated remains in the possession of a crematory authority or
14 funeral establishment on or after the operative date of this act.

15 (2) Cremated remains shall be delivered or released by
16 the crematory authority to the representative specified by the
17 authorizing agent on the cremation authorization form. The owner
18 of the crematory authority or his or her representative and the
19 party receiving the cremated remains shall sign a cremated remains
20 receipt form. If the cremated remains are shipped, a form used by
21 the shipper under subsection (4) of section 27 of this act may be
22 used in lieu of a completed cremated remains receipt form if the
23 shipper's form contains the information required for a cremated
24 remains receipt form. Both the party delivering such remains and
25 the party receiving such remains shall retain a copy of the
26 cremated remains receipt form or shipper's form. Upon delivery,
27 the cremated remains may be further transported within this state

1 in any manner without a permit.

2 Sec. 29. The department may adopt and promulgate rules
3 and regulations to implement the Cremation of Human Remains Act,
4 which shall include, but not be limited to, rules and regulations
5 establishing conditions under which human remains of persons whose
6 death was caused by an infectious, contagious, communicable, or
7 dangerous disease may be transported in this state to a crematory
8 for the purpose of cremation, and minimum sanitation standards for
9 all crematories.

10 Sec. 30. A crematory authority may enact reasonable
11 bylaws not inconsistent with the Cremation of Human Remains Act for
12 the management and operation of a crematory operated by such
13 authority. Nothing in this section shall prevent a crematory
14 authority from enacting bylaws which contain more stringent
15 requirements than those provided in the act.

16 Sec. 31. The Cremation of Human Remains Act shall be
17 construed and interpreted as a comprehensive cremation law, and the
18 provisions of the act shall take precedence over any existing laws
19 or rules and regulations that govern human remains that do not
20 specifically address cremation.

21 Sec. 32. Section 28-1301, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 28-1301. (1) The definitions found in section 12-1204
24 shall apply to this section.

25 (2) Except as provided in subsection (3) of this section,
26 a person commits the offense of removing, abandoning, or concealing
27 human skeletal remains or burial goods if he or she:

1 (a) Knowingly digs up, disinters, removes, or carries
2 away from its place of deposit or burial any such remains or goods,
3 attempts to do the same, or aids, incites, assists, encourages, or
4 procures the same to be done;

5 (b) Knowingly throws away or abandons any such remains or
6 goods in any place other than a regular place for burial and under
7 a proper death certificate issued under section 71-182 or 71-605;
8 or

9 (c) Receives, conceals, purchases, sells, transports,
10 trades, or disposes of any such remains or goods if the person
11 knows or has reason to know that such remains or goods have been
12 dug up, disinterred, or removed from their place of deposit or
13 burial or have not been reported in a proper death certificate
14 issued under section 71-182 or 71-605, attempts to do the same, or
15 aids, incites, assists, encourages, or procures the same to be
16 done.

17 (3) This section shall not apply to: (a) A body
18 authorized to be surrendered for purposes of dissection as provided
19 by law; (b) the body of any person directed to be delivered by
20 competent authority for purposes of dissection; (c) the officers of
21 any lawfully constituted cemetery acting under the direction of the
22 board of trustees in removing any human skeletal remains or burial
23 goods from one place of burial in the cemetery to another place in
24 the same cemetery when disinterment and reinterment permits are
25 secured and return made pursuant to section 71-605; (d) any person
26 removing the human skeletal remains or burial goods of a relative
27 or intimate friend from one place of burial in any lawfully

1 constituted cemetery to another when consent for such removal has
2 been obtained from the lawfully constituted authority thereof and
3 permits for disinterment and reinterment secured and return made
4 pursuant to section 71-605; (e) any professional archaeologist
5 engaged in an otherwise lawful and scholarly excavation of a
6 nonburial site who unintentionally encounters human skeletal
7 remains or associated burial goods if the archaeologist complies
8 with the notification requirements of the Unmarked Human Burial
9 Sites and Skeletal Remains Protection Act; or (f) any
10 archaeological excavation by the Nebraska State Historical Society
11 or its designee in the course of execution of the duties of the
12 society if any human skeletal remains or associated burial goods
13 discovered during such excavation are disposed of pursuant to
14 section 12-1208.

15 (4) Violation of this section shall be a Class ~~I~~
16 ~~misdemeanor~~ IV felony.

17 Sec. 79. Section 71-1301, Revised Statutes Supplement,
18 2000, is amended to read:

19 71-1301. For purposes of sections 71-1301 to 71-1306 and
20 71-1326 to 71-1354, unless the context otherwise requires:

21 (1) Accredited school of mortuary science ~~shall mean~~
22 means a school of the same type as those rated Class A by the
23 Conference of Funeral Service Examining Boards of the United
24 States, Inc., approved by the department upon recommendation of the
25 board;

26 (2) Apprentice ~~shall mean~~ means a person registered with
27 the department as an apprentice who is completing a twelve-month

1 apprenticeship under the supervision of a licensed funeral director
2 and embalmer practicing in the State of Nebraska. The licensed
3 funeral director and embalmer ~~shall be~~ is responsible for all
4 funeral assists and embalmings completed by the apprentice;

5 (3) Board ~~shall mean~~ means the Board of Funeral Directing
6 and Embalming;

7 (4) Branch establishment ~~shall mean~~ means a place of
8 business situated at a specific street address or location which is
9 a subsidiary of a licensed funeral establishment, which contains a
10 casket display room, a viewing area, or an area for conducting
11 funeral services, or all of them, and where any portion of the
12 funeral service or arrangements for the disposition of a dead human
13 body is conducted;

14 (5) Casket ~~shall mean~~ means a receptacle for a dead human
15 body and ~~shall~~ does not include vaults, lawn crypts, mausoleums, or
16 other outside receptacles for caskets;

17 (6) Department ~~shall mean~~ means the Department of Health
18 and Human Services Regulation and Licensure;

19 (7) Embalming ~~shall mean~~ means the practice of preparing
20 a dead human body for burial or other final disposal by a licensed
21 funeral director and embalmer or an apprentice, requesting and
22 obtaining burial or removal permits, or assuming any of the other
23 duties incident to the practice of embalming. Any person who
24 publicly professes to be a funeral director and embalmer or an
25 apprentice ~~shall be~~ is deemed to be practicing embalming. The
26 performance of the following acts ~~shall~~ are also ~~be~~ deemed to be
27 the practice of embalming: (a) The disinfection and preservation of

1 dead human beings, entire or in part; and (b) the attempted
2 disinfection and preservation thereof by the use or application of
3 chemical substances, fluids, or gases ordinarily used, prepared, or
4 intended for such purposes, either by outward application of such
5 chemical substances, fluids, or gases on the body or by introducing
6 them into the body, by vascular or hypodermic injection, or by
7 direct introduction into the organs or cavities;

8 (8) Funeral directing ~~shall mean~~ means (a) counseling
9 families or next of kin in regard to the conduct of a funeral
10 service for a dead human body for burial, disposition, or cremation
11 or directing or supervising burial, disposition, or cremation of
12 dead human bodies, - ~~Cremation shall be considered as a final~~
13 ~~disposition of a dead human body the same as interment,~~ (b)
14 providing for or maintaining a funeral establishment, or (c) the
15 act of representing oneself as or using in connection with one's
16 name the title of funeral director, mortician, or any other title
17 implying that he or she is engaged in the business of funeral
18 directing;

19 (9) Funeral establishment ~~shall mean~~ means a place of
20 business situated at a specific street address or location devoted
21 to the care and preparation of dead human bodies for burial,
22 disposition, or cremation or to conducting or arranging funeral
23 services for dead human bodies;

24 (10) Licensee ~~shall mean~~ means a person licensed by the
25 department as a funeral director and embalmer on or after January
26 1, 1994, or a person licensed as a funeral director or embalmer
27 prior to January 1, 1994;

1 (11) Licensure examination ~~shall mean~~ means a national
2 standardized examination, the state jurisprudence examination, and
3 the vital statistic forms examination; and

4 (12) Supervision ~~shall mean~~ means the direct oversight or
5 the easy availability of the supervising funeral director and
6 embalmer. The first twenty-five funeral assists and embalmings
7 shall be completed under direct onsite supervision of the
8 supervising funeral director and embalmer.

9 Sec. 80. Section 71-1339, Revised Statutes Supplement,
10 2000, is amended to read:

11 71-1339. The right to control the disposition of the
12 remains of a deceased person, except in the case of a minor subject
13 to section 23-1824 and unless other directions have been given by
14 the decedent, vests in the following persons in the order named:

15 (1) The surviving spouse of the decedent;

16 (2) If the surviving spouse is incompetent or not
17 available, or if there be no surviving spouse, the decedent's
18 surviving adult children. If there is more than one adult child,
19 any adult child who confirms in writing the notification of all
20 other adult children, may direct the manner of disposition unless
21 the funeral establishment or crematory authority receives written
22 objection to the manner of disposition from another adult child;

23 (3) The decedent's surviving parents;

24 (4) The persons in the next degree of kinship under the
25 laws of descent and distribution to inherit the estate of the
26 decedent. If there is more than one person of the same degree, any
27 person of that degree may direct the manner of disposition;

1 (5) A guardian of the person of the decedent at the time
2 of such person's death;

3 (6) The personal representative of the decedent;

4 (7) The State Anatomical Board or county board in the
5 case of an indigent person or any other person whose disposition of
6 his or her remains is the responsibility of the state or county; or

7 (8) A representative of an entity described in section
8 71-1340 that has arranged with the funeral establishment or
9 crematory authority to cremate a body part in the case of body
10 parts received from such entity described in section 71-1340.

11 A funeral director, funeral establishment, crematory
12 authority, or crematory operator shall not be subject to criminal
13 prosecution or civil liability for carrying out the otherwise
14 lawful instructions of the person or persons described in this
15 section if the funeral director or crematory authority or operator
16 reasonably believes such person is entitled to control the final
17 disposition of the remains of the deceased person. ~~(1) The~~
18 ~~surviving spouse, (2) if the surviving spouse is incompetent or not~~
19 ~~available, or if there be no surviving spouse, adult child of the~~
20 ~~decedent, (3) a surviving parent of the decedent, (4) an adult~~
21 ~~brother or sister of the decedent, (5) an adult person in the next~~
22 ~~degrees of kindred in the order named by the laws of Nebraska as~~
23 ~~entitled to succeed to the estate of the decedent, (6) the State~~
24 ~~Anatomical Board, or (7) the county board of the county in which~~
25 ~~death occurred.~~

26 The liability for the reasonable cost of interment the
27 final disposition of the remains of the deceased person devolves

1 jointly and severally upon all kin of the decedent in the same
2 degree of kindred and upon the estate of the decedent and, in cases
3 when the county board has the right to control disposition of the
4 remains under subdivision (7) of this section, upon the county in
5 which death occurred from funds available for such purpose.

6 Sec. 81. Section 71-1340, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 71-1340. A decedent, prior to his or her death, may
9 direct the preparation for type or place of ~~interment~~ the final
10 disposition of his or her remains, either by oral or written
11 instructions. If such instructions are in a will or other written
12 instrument, ~~he or she~~ the decedent may direct that the whole or any
13 part of such remains be given to a teaching institution,
14 university, college, or legally licensed hospital, to the Director
15 of Regulation and Licensure, or to or for the use of any nonprofit
16 blood bank, artery bank, eye bank, or other therapeutic service
17 operated by any agency approved by the Director of Regulation and
18 Licensure under rules and regulations established by the director.
19 The person or persons otherwise entitled to control the disposition
20 of the remains under this section shall faithfully carry out the
21 directions of the decedent.

22 If such instructions are contained in a will or other
23 written instrument, they shall be immediately carried out,
24 regardless of the validity of the will in other respects or of the
25 fact that the will may not be offered for or admitted to probate
26 until a later date.

27 This section shall be administered and construed to the

AM3219
LB 1021
MMM-03-20

AM3219
LB 1021
MMM-03-20

1 end that such expressed instructions of any person shall be
2 faithfully and promptly performed.

3 A funeral director and embalmer, physician, or cemetery
4 authority shall not be liable to any person or persons for carrying
5 out such instructions of the decedent, and any teaching
6 institution, university, college, or legally licensed hospital or
7 the Director of Regulation and Licensure shall not be liable to any
8 person or persons for accepting the remains of any deceased person
9 under a will or other written instrument as above set forth.".

10 2. Renumber the remaining sections and correct internal
11 references and the repealer accordingly.