

Assembly Bill No. 2877

CHAPTER 1151

An act to amend Sections 7615, 7616, 7617, 7618, 7619, 7621, 7622, 7624, 7628, 7630, 7641, 7643, 7649, 7660, 7662, 7664, 7665, 7666, 7667, 7668, 7669, 7670, 7708, 7711, 7716, 7717, 7717.5, 7718, 7729, 7735, 7736, 7737, 7737.3, 7738, 7739, 7740.5, and 7745 of, to add Sections 7616.2, 7617.1, 7619.2, 7619.3, 7622.2, 7622.3, 7635, and 7651 to, and to repeal Section 7666.5 of, the Business and Professions Code, relating to funeral establishments, and making an appropriation therefor.

[Approved by Governor September 30, 1996. Filed
with Secretary of State September 30, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2877, Davis. Funeral establishments.

Existing law provides that the Department of Consumer Affairs succeeds to, and is vested with, all the duties, powers, purpose, responsibilities, and jurisdiction of the Funeral Directors and Embalmers Board as of January 1, 1996, in the absence of a consolidation of this board with the Cemetery Board or other restructuring of the boards.

The Funeral Directors and Embalmers Law provides for the licensure and regulation of funeral directors and embalmers, as specified.

This bill would provide for licensing of funeral establishments in addition to funeral directors and embalmers, and would require a licensed funeral establishment to employ a licensed funeral director. This bill would authorize licensed funeral establishments within close geographical proximity to each other to request the board to allow a licensed funeral director to manage, direct, or control more than one facility. The bill would also revise various education, examination, and other licensing requirements applicable to embalmers, embalmers' apprentices, and funeral directors, as specified.

This bill would also require any person employed by, or an agent of, a licensed funeral establishment who consults with a family of a deceased person or its representatives concerning the arranging of funeral services to receive documented training and instructions on laws, rules, and regulations pertaining to specified subjects.

A violation of any of the provisions of the Funeral Directors and Embalmers Law is a misdemeanor. This bill would therefore create new crimes and thus impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The bill would specify certain application and license renewal fees for funeral establishments and arrangement counselors and revise fees applicable to these and other licensees. Existing provisions of the Business and Professions Code continuously appropriate moneys in the State Funeral Directors and Embalmers Fund. Because this bill would increase the amount of moneys in that fund, it would constitute an appropriation.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 7615 of the Business and Professions Code is amended to read:

7615. A funeral director is a person engaged in or conducting, or holding himself or herself out as engaged in any of the following:

(a) Preparing for the transportation or burial or disposal, or directing and supervising for transportation or burial or disposal of human remains.

(b) Maintaining an establishment for the preparation for the transportation or disposition or for the care of human remains.

(c) Using, in connection with his or her name, the words “funeral director,” or “undertaker,” or “mortician,” or any other title implying that he or she is engaged as a funeral director.

SEC. 2. Section 7616 of the Business and Professions Code is amended to read:

7616. (a) A licensed funeral establishment is a place of business conducted in a building or separate portion of a building having a specific street address or location and devoted exclusively to those activities as are incident, convenient, or related to the preparation and arrangements, financial and otherwise, for the funeral, transportation, burial or other disposition of human remains and including, but not limited to, any of the following:

(1) A suitable room for the storage of human remains, or

(2) A preparation room equipped with a sanitary flooring and necessary drainage and ventilation and containing necessary instruments and supplies for the preparation, sanitation, or embalming of human remains for burial or transportation.

(b) Licensed funeral establishments under common ownership or by contractual agreement within close geographical proximity of each other shall be deemed to be in compliance with the requirements of paragraph (1) or (2) of subdivision (a) if at least one of the establishments has a room described in those paragraphs.



(c) Except as provided in Section 7609 of this code, and except accredited embalming schools and colleges engaged in teaching students the art of embalming, no person shall operate or maintain or hold himself or herself out as operating or maintaining any of the facilities specified in paragraph (2) of subdivision (a) of this section, unless he or she is licensed as a funeral director.

(d) Nothing in this section shall be construed to require a funeral establishment to conduct its business or financial transactions at the same location as its preparation or storage of human remains.

(e) Nothing in this chapter shall be deemed to render unlawful the conduct of any ambulance service from the same premises as those on which a licensed funeral establishment is conducted, including the maintenance in connection with the funeral establishment of garages for the ambulances and living quarters for ambulance drivers.

SEC. 3. Section 7616.2 is added to the Business and Professions Code, to read:

7616.2. A licensed funeral establishment shall at all times employ a licensed funeral director to manage, direct, or control its business or profession. Notwithstanding any other provisions of this chapter, licensed funeral establishments within close geographical proximity of each other, may request the board to allow a licensed funeral director to manage, direct, or control the business or profession of more than one facility.

SEC. 4. Section 7617 of the Business and Professions Code is amended to read:

7617. The business of a licensed funeral establishment shall be conducted and engaged in at a fixed place or facility.

No person, partnership, association, corporation, or other organization shall open or maintain a place or establishment at which to engage in or conduct, or hold himself or herself or itself out as engaging in or conducting, the business of a funeral establishment without a license.

SEC. 4.5. Section 7617.1 is added to the Business and Professions Code, to read:

7617.1. The applicant for a funeral establishment license, or in the case the applicant is an association, partnership, or corporation, the officer or partner appearing therefor, shall be at least 18 years of age and shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

SEC. 5. Section 7618 of the Business and Professions Code is amended to read:

7618. An application for a funeral director's license shall be written on a form provided by the board, verified by the applicant, accompanied by the fee fixed by this chapter and filed at its Sacramento office.



SEC. 6. Section 7619 of the Business and Professions Code is amended to read:

7619. The applicant for a funeral director's license shall be at least 18 years of age, possess an associate of arts or science degree, or the equivalent, or a higher level of education as recognized by the Western Association of Colleges and Universities, or any other nationally recognized accrediting body of colleges and universities, and shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

SEC. 7. Section 7619.2 is added to the Business and Professions Code, to read:

7619.2. The board shall grant a funeral director's license to any applicant who complies with this article, notwithstanding Section 7619, if the applicant can demonstrate that he or she has complied with Section 7622 on or before July 1, 1999.

SEC. 7.5. Section 7619.3 is added to the Business and Professions Code, to read:

7619.3. No licensed funeral director shall engage in or conduct, or hold himself or herself out as engaging in or conducting, the activities of a funeral director without being employed by, or without being a sole proprietor of, a licensed funeral establishment.

SEC. 8. Section 7621 of the Business and Professions Code is amended to read:

7621. The applicant shall also furnish the board with satisfactory proof that the facility in which he or she intends to conduct business as a funeral director is or will be constructed, equipped and maintained in all respects as a licensed funeral establishment as defined in this chapter.

SEC. 9. Section 7622 of the Business and Professions Code is amended to read:

7622. Before an individual is granted a funeral director's license, he or she shall successfully pass an examination upon the following subjects:

- (a) The signs of death.
- (b) The manner by which death may be determined.
- (c) The laws governing the preparation, burial and disposal of human remains, and the shipment of bodies dying from infectious or contagious diseases.
- (d) Local health and sanitary ordinances and regulations relating to funeral directing and embalming.

SEC. 10. Section 7622.2 is added to the Business and Professions Code, to read:

7622.2. No person, partnership, association, corporation, or other organization shall open or maintain a place or establishment at which to engage in or conduct, or hold himself, herself, or itself out as engaging in or conducting, the activities of a funeral director without a license.



SEC. 11. Section 7622.3 is added to the Business and Professions Code, to read:

7622.3. The board shall adopt regulations requiring continuing education of 14 hours every two years for licensed funeral directors.

SEC. 12. Section 7624 of the Business and Professions Code is amended to read:

7624. Not more than one person, partnership, association, corporation, or other organization engaged in business as a funeral establishment shall transact business in one specific funeral facility.

SEC. 13. Section 7628 of the Business and Professions Code is amended to read:

7628. Any person, partnership, association, corporation, or other organization desiring to change the location of his, hers, or its licensed funeral establishment shall apply therefor on forms furnished by the board and shall include a fee fixed by this chapter.

The application shall be granted by the executive officer upon the filing with the board of a favorable report, approved by the executive officer, from a board member, except a public member, or inspector concerning the physical status or plans and specifications of the proposed licensed funeral establishment to the effect that it conforms to the requirements of this article. Every application so granted shall be submitted for approval at the next meeting of the board after the issuance thereof, and no application for change of place of business shall become permanent until approved by the board.

SEC. 14. Section 7630 of the Business and Professions Code is amended to read:

7630. A funeral establishment's license may be assigned upon payment of the fee fixed by this chapter and upon compliance with Section 7616.2. However, an audit shall be conducted of the firm's preneed trust funds and any shortages in those funds shall be funded.

The assignee has the right to renew the license.

SEC. 15. Section 7635 is added to the Business and Professions Code, to read:

7635. Any person employed by, or an agent of, a licensed funeral establishment, who consults with the family or representatives of a family of a deceased person for the purpose of arranging for services as set forth in subdivision (a) of Section 7615, shall receive documented training and instruction which results in a demonstrated knowledge of all applicable federal and state laws, rules, and regulations including those provisions dealing with vital statistics, the coroner, anatomical gifts, and other laws, rules, and regulations pertaining to the duties of a funeral director. A written outline of the training program, including documented evidence of the training time, place, and participants, shall be maintained in the funeral establishment and shall be available for inspection and comment by an inspector of the board.



SEC. 16. Section 7641 of the Business and Professions Code is amended to read:

7641. It is unlawful for any person to embalm a body, or engage in, or hold himself or herself out as engaged in practice as an embalmer, unless he or she is licensed by the board; provided, however, that this section shall have no effect on students and instructors of embalming in embalming colleges approved by the board.

SEC. 17. Section 7643 of the Business and Professions Code is amended to read:

7643. In order to qualify for a license as an embalmer, the applicant shall comply with all of the following requirements:

(a) Be over 18 years of age.

(b) Not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

(c) Furnish proof showing completion of a high school course or instead he or she may furnish the board with evidence that he or she has been licensed and has practiced as an embalmer for a minimum of three years within the seven years preceding his or her application in any other state or country and that the license has never been suspended or revoked for unethical conduct.

(d) Have completed at least two years of apprenticeship under an embalmer licensed and engaged in practice as an embalmer in this state in a funeral establishment which shall have been approved for apprentices by the board and while so apprenticed shall have assisted in embalming not fewer than 100 human remains; provided, however, that a person who has been licensed and has practiced as an embalmer for a minimum of three years within the seven years preceding his or her application in any other state or country and whose license has never been suspended or revoked for unethical conduct shall not be required to serve any apprenticeship in this state.

(e) Have successfully completed a course of instruction of not less than one academic year in an embalming school approved by the board and accredited by the American Board of Funeral Service Education.

SEC. 21. Section 7649 of the Business and Professions Code is amended to read:

7649. Except as provided in Section 10375 of the Health and Safety Code, whenever the name of any licensed embalmer is subscribed to any certificate, the purport of which is that he or she has performed any act mentioned in the certificate, the licensed embalmer shall actually sign his or her name thereto.

SEC. 22. Section 7651 is added to the Business and Professions Code, to read:

7651. The board shall adopt regulations requiring continuing education of 14 hours every two years for licensed embalmers.



SEC. 23. Section 7660 of the Business and Professions Code is amended to read:

7660. An apprentice embalmer is a person engaged in the study of embalming under the instruction and supervision of a licensed embalmer who has had at least two years' practical experience as a California licensed embalmer.

SEC. 24. Section 7662 of the Business and Professions Code is amended to read:

7662. In order to qualify as an apprentice embalmer, an applicant shall comply with all of the following requirements:

- (a) Be over 18 years of age.
- (b) Not have committed acts or crimes constituting grounds for denial of licensure under Section 480.
- (c) Furnish proof showing completion of a high school course or instead he or she may furnish the board with evidence that he or she has been licensed and has practiced as an embalmer for a minimum of three years within the seven years preceding his or her application in any other state or country and that the license has never been suspended or revoked for unethical conduct.

SEC. 25. Section 7664 of the Business and Professions Code is amended to read:

7664. Certificates of apprenticeship issued pursuant to this article shall expire when the holder has been issued a license as an embalmer, or six years from the date of registration, whichever first occurs. The certificates may not be renewed, but an apprentice embalmer who has not completed his or her term of apprenticeship at the time his or her certificate expires may apply for reregistration upon compliance with Section 7661. The board may, when the circumstances warrant, allow an apprentice credit under a reregistration for the time actually served under a previous registration, but no reregistration shall have the effect of continuing the term of apprenticeship beyond the period specified in Sections 7666 and 7666.5.

SEC. 26. Section 7665 of the Business and Professions Code is amended to read:

7665. All registered apprentice embalmers shall be under the supervision and control of the board and shall comply with the following requirements during their period of apprenticeship:

- (a) Shall file a report of apprenticeship as follows:
 - (1) On or before January 15 of each year covering the period of apprenticeship ending as of December 31 preceding.
 - (2) Upon change of supervising embalmer or employer, or both.
 - (3) Upon completion of apprenticeship.
 - (4) Upon application for leave of absence for a period in excess of 15 days.
 - (5) Upon suspending apprenticeship to attend embalming college.



(6) Upon application for reregistration after suspension or revocation of registration where complete report of previous registration has not been filed.

(b) The information contained in the report shall consist of a concise summary of the work done by the apprentice during the period covered thereby, shall be verified by the apprentice and certified to as correct by his or her supervising embalmer and employer. Upon request of the board, each funeral director in whose establishment an apprenticeship is being, or has been, served, and each embalmer under whose instruction or supervision an apprenticeship is being, or has been served, shall promptly file with the board a report or such other information as may be requested relating to the apprenticeship. Failure to comply with the request is cause for revocation by the board of the approval granted to the funeral director or embalmer for the training of apprentices and is also a cause for disciplinary action against the funeral director or embalmer.

SEC. 27. Section 7666 of the Business and Professions Code is amended to read:

7666. (a) The term of apprenticeship shall be two years; provided, however, that if an apprentice after having served his or her apprenticeship fails to pass the examination for an embalmer's license he or she may continue for one additional term of apprenticeship, which shall be the maximum apprenticeship permitted and provided further that an apprentice may, upon filing an application therefor, be permitted to continue the apprenticeship for a period not to exceed six months, if approved, for any of the following reasons:

(1) While awaiting the processing of applications submitted to the board.

(2) While awaiting notification of grades of embalmers' examinations given by the board.

(3) While awaiting the commencement of a class of an embalming school or college when the apprentice intends to enroll in the school or college.

Applications filed for an extension of apprenticeship shall be filed by the applicant with the Sacramento office of the board not less than 15 days prior to the date the applicant requests the extension to commence.

(b) Terms of apprenticeship may be served before, after, or divided by the embalming college course at the option of the apprentice; provided, however, that the term of apprenticeship must be completed, excluding time spent in active military service, within six years from the date of original registration, or from the date an apprentice successfully passes the examination for embalmer's license required in Section 7646 of this code, whichever first occurs, and provided further that if the term of apprenticeship is not



completed within the six-year period, the board may require that the applicant serve the additional term of apprenticeship, not to exceed two years.

(c) A student attending an embalming college may register as an apprentice during his or her college term but shall receive no credit for apprenticeship on the term required by this code unless he or she is also a full-time employee of a funeral director.

(d) An apprentice while serving his or her required term of apprenticeship shall be a full-time employee in the funeral establishment in which he or she is employed.

SEC. 28. Section 7666.5 of the Business and Professions Code is repealed.

SEC. 29. Section 7667 of the Business and Professions Code is amended to read:

7667. (a) The board shall have the power to grant leaves of absence and extensions of leaves of absences and approve absences during the term of apprenticeship.

(b) A leave of absence, including any extensions, shall not be approved for a longer period than an aggregate of one year.

(c) No credit will be given to an apprentice on his or her apprenticeship for the period during which he or she is absent from duty on leave.

(d) Application for a leave of absence and for an extension thereof shall be made by the apprentice on a form provided by the board.

(e) Upon termination of a leave of absence, the apprentice shall report that fact to the board within 10 days of his or her resumption of apprenticeship by returning to the Sacramento office of the board, his or her certificate of registration accompanied by a statement as to the resumption of apprenticeship which statement shall be certified as correct by the funeral director in whose establishment he or she is to resume his or her duties and by the embalmer under whose supervision he or she is to resume his or her apprenticeship.

(f) Failure to report within 10 days after the expiration date of any leave of absence shall be cause for cancellation of the registration of an apprentice.

SEC. 30. Section 7668 of the Business and Professions Code is amended to read:

7668. The board may suspend or revoke a certificate of apprenticeship, after notice and upon complaint and hearing in accordance with the provisions of Article 6, if the apprentice is guilty of any of the following acts or omissions:

(a) Failure to devote full-time employment to the duties of his or her apprenticeship.

(b) Failure to make any report required by law to the board.

(c) Absence from duty except as provided in this code.

(d) Being on duty as an apprentice while under the influence of liquor.



(e) Disobedience of proper orders or instructions of his or her superior.

(f) Violation of any provision of this chapter or any rule or regulation of the board.

(g) Soliciting business for a funeral director or for an embalmer in violation of this chapter.

(h) Fraud or misrepresentation in obtaining a certificate of registration as an apprentice.

(i) Conviction of a crime substantially related to the qualifications, functions and duties of an apprentice, in which case the record of conviction, or a certified copy, shall be conclusive evidence of the conviction.

SEC. 31. Section 7669 of the Business and Professions Code is amended to read:

7669. An apprentice who has had his or her certificate of apprenticeship suspended or revoked may, within one year after the suspension or revocation apply for reregistration upon compliance with the law in effect at the time he or she so applies and payment of the apprentice application fee fixed by this chapter. No reregistration shall have the effect of continuing an apprenticeship beyond the period specified in Section 7666.

The board may, when the circumstances warrant, allow an apprentice credit under a reregistration for the time actually served under a previous registration, but if the previous registration has been suspended or revoked for unprofessional conduct, not more than 75 percent of the time previously served shall be credited on the reregistration.

SEC. 32. Section 7670 of the Business and Professions Code is amended to read:

7670. (a) The apprenticeship required by this article shall be served in a licensed funeral establishment that shall have been previously approved for apprenticeship training by the board. In order to qualify for approval the funeral director shall submit to the board an application, accompanied by the fee fixed by this chapter, showing:

(1) That not less than 50 human remains per apprentice employed have been embalmed in the establishment during the 12 months immediately preceding the date of the application.

(2) That the applicant has, and will continue to have, in full-time employment, for each two apprentices employed in his or her establishment, a California embalmer who has had not less than two years' practical experience as a California licensed embalmer immediately preceding the date of the application.

(3) That the licensed funeral establishment of that applicant meets the requirements of law as to equipment, cleanliness and sanitation as determined by an inspection report filed with the board.



(b) Licensed funeral establishments under common ownership within close geographical proximity of each other may request any of the following from the board:

(1) To be treated in aggregate for the purpose of meeting the requirements of paragraph (1) of subdivision (a).

(2) To designate one additional supervising embalmer per registered apprentice.

(3) To allow a registered apprentice to serve in any or all of the licensed funeral establishments requested and approved pursuant to this section.

(c) Approval granted under this section shall be renewed annually upon application by the funeral director, showing continued compliance with the foregoing provisions of this section, filed with the board not later than January 15 of each year, which application shall be acted upon by the board at its first meeting thereafter. An application for renewal shall be accompanied by the fee fixed by this chapter.

SEC. 33. Section 7708 of the Business and Professions Code is amended to read:

7708. The board, after a hearing, may deny the application of a funeral establishment, funeral director, embalmer, or apprentice embalmer on proof that the applicant has committed acts or crimes constituting grounds for denial of licensure under Section 480. The record of conviction, or a certified copy thereof, shall be conclusive evidence of the conviction.

SEC. 34. Section 7711 of the Business and Professions Code is amended to read:

7711. When a funeral establishment, funeral director or embalmer has had his, or her, or its license suspended, canceled, or revoked by the board, the board, upon written application by the licensee affected, upon not less than 10 days' notice to all parties of record in the particular case, and after hearing all evidence offered in support of and in opposition to that application, may, in its discretion, and upon those terms as it may deem just, reinstate the applicant.

SEC. 35. Section 7716 of the Business and Professions Code is amended to read:

7716. Every funeral establishment, funeral director or embalmer, or the agents or representatives thereof, who, after a death or while a death is impending, pays, offers to pay or causes to be paid, directly or indirectly, any sum of money or other valuable consideration for the securing of business is guilty of a misdemeanor.

SEC. 36. Section 7717 of the Business and Professions Code is amended to read:

7717. Every person, who pays or causes to be paid or offers to pay to any funeral establishment, funeral director or embalmer, or to the agent, assistant or employee of either, any commission or bonus or



rebate or other thing of value in consideration of the funeral establishment, funeral director or embalmer recommending or causing human remains to be disposed of in any crematory, mausoleum or cemetery, is guilty of a misdemeanor.

SEC. 37. Section 7717.5 of the Business and Professions Code is amended to read:

7717.5. Every person who pays or causes to be paid or offers to pay to any funeral establishment, funeral director or embalmer, or to the agent, assistant or employee of either, any commission or bonus or rebate or other thing of value in consideration of the funeral establishment, funeral director or embalmer recommending or causing the purchase of flowers from any particular florist or dealer in flowers, for use in connection with a funeral service, is guilty of a misdemeanor; provided, that this section shall not apply to a funeral establishment or funeral director who owns or operates a flower shop as a part of his, her or its funeral business, or to his, her or its agents or employees.

SEC. 38. Section 7718 of the Business and Professions Code is amended to read:

7718. Every person who, after a death or while a death is impending, solicits or accepts any sum of money or other valuable consideration, directly or indirectly, from a funeral establishment, funeral director or embalmer, his, her, or its agent or representative, in order that the funeral establishment, funeral director or embalmer might obtain business, is guilty of a misdemeanor.

SEC. 39. Section 7729 of the Business and Professions Code is amended to read:

7729. The amount of the fees prescribed by this chapter shall be fixed according to the following schedule with the minimum amount specified being the amount fixed on January 1, 1988.

(a) The application fee for a funeral director's license shall be not less than one hundred dollars (\$100) and not more than two hundred dollars (\$200).

(b) The application fee for change of location of a funeral establishment's license shall be not less than one hundred fifty dollars (\$150) and not more than two hundred fifty dollars (\$250).

(c) The application fee for permission to assign a funeral establishment's license shall be not less than two hundred dollars (\$200) and not more than three hundred dollars (\$300).

(d) The license renewal fee payable by a licensed funeral director shall be not less than one hundred dollars (\$100) and not more than two hundred dollars (\$200). The fee for a delinquent renewal of a funeral director's license shall be 150 percent of the timely renewal fee.

(e) The application fee for an embalmer's license and the examination for the license shall be not less than one hundred dollars (\$100) and not more than one hundred fifty dollars (\$150).



(f) The renewal fee payable by a licensed embalmer shall be not less than seventy-five dollars (\$75) and not more than one hundred twenty-five dollars (\$125). The fee for a delinquent renewal of an embalmer's license shall be 150 percent of the timely renewal fee.

(g) The application fee for a certificate of registration as an apprentice embalmer shall be not less than thirty dollars (\$30) and not more than sixty dollars (\$60).

(h) The fee for an application by a funeral establishment for approval to train apprentice embalmers and for renewal of that approval shall be not less than fifty dollars (\$50) and not more than one hundred dollars (\$100).

(i) The application fee for a funeral director's examination shall be not less than seventy-five dollars (\$75) and not more than one hundred dollars (\$100).

(j) The fee for a timely filing of an individual report or a combined report on preneed trust funds shall be not less than one hundred dollars (\$100) and not more than two hundred dollars (\$200). The fee for a late filing of any report on preneed trust funds shall be 150 percent of the applicable timely fee.

(k) The application fee for permission to change the name appearing on a funeral establishment's license shall be not less than one hundred dollars (\$100) and not more than two hundred dollars (\$200), and for permission to change the name on any other license or certificate, not less than twenty dollars (\$20) and not more than forty dollars (\$40).

(l) The application fee for a duplicate funeral director's license, a duplicate funeral establishment's license, a duplicate embalmer's license, or a duplicate certificate of registration as an apprentice embalmer, shall be not less than twenty dollars (\$20) and not more than forty dollars (\$40).

(m) The fee for filing a report of a change of corporate officers, managers, or preneed trust fund trustees shall be not less than twenty-five dollars (\$25) and not more than fifty dollars (\$50).

(n) The application fee for a funeral establishment license shall be not less than three hundred dollars (\$300) and not more than four hundred dollars (\$400).

(o) The license renewal fee for a licensed funeral establishment shall be not less than three hundred dollars (\$300) nor more than four hundred dollars (\$400).

SEC. 40. Section 7735 of the Business and Professions Code is amended to read:

7735. No funeral establishment licensed under the laws of the State of California, or the agents or employees of a funeral establishment, shall enter into or solicit any preneed arrangement, contract or plan, hereinafter referred to as "contract," requiring the payment to the licensee of money or the delivery to the licensee of securities to pay for the final disposition of human remains or for



funeral services or for the furnishing of personal property or funeral merchandise, wherein the use or delivery of those services, property or merchandise is not immediately required, unless the contract requires that all money paid directly or indirectly and all securities delivered under that agreement or under any agreement collateral thereto, shall be held in trust for the purpose for which it was paid or delivered until the contract is fulfilled according to its terms; provided, however, that any payment made or securities deposited pursuant to this article shall be released upon the death of the person for whose benefit the trust was established as provided in Section 7737. The income from the corpus may be used to pay for a reasonable annual fee for administering the trust, including a trustee fee, to be determined by the board, and to establish a reserve of not to exceed 10 percent of the corpus as a revocation fee in the event of cancellation on the part of the beneficiary.

None of the trust corpus shall be used for payment of any commission nor shall any of the trust corpus be used for other expenses of trust administration.

SEC. 41. Section 7736 of the Business and Professions Code is amended to read:

7736. For the purposes of this article the term "trustee" shall mean any banking institution or trust company legally authorized and empowered by the State of California to act as trustee in the handling of trust funds or not less than three persons one of whom may be an employee of the funeral establishment; the word "trustor" shall mean any person who pays the money or deposits the securities used for those preneed arrangements; the term "beneficiary" shall be the person for whom the funeral services are arranged; the words "corpus of the trust" shall include all moneys paid and securities delivered pursuant to the provisions of the article.

SEC. 42. Section 7737 of the Business and Professions Code is amended to read:

7737. All securities purchased by the trustor for deposit in trust and all money received from the trustor for deposit in trust shall be placed in trust with a trustee within 30 days of their receipt by the funeral establishment pursuant to a trust agreement executed by the funeral establishment, the trustor and trustee which shall provide that the trustee shall hold the money or securities in trust for the purposes for which deposited and that the trustee, upon the signature of a majority of such trustees, shall deliver the corpus of the trust to the funeral establishment upon the filing of a certified copy of the death certificate or other satisfactory evidence of the death of the beneficiary, together with satisfactory evidence that the funeral establishment has furnished the merchandise and services, provided, however, that (1) in the case of a trust agreement between any of the trustees set forth in Section 7736 and a recipient of public assistance, under the provisions of subdivision (a) of Section 11158 or paragraph



(1) of subdivision (e) of Section 12152 of the Welfare and Institutions Code, and provided the value limitations of those sections are not exceeded, such trust agreement may further provide that it is irrevocable, and (2) in all other cases such trust agreement shall further provide that at any time before the funeral establishment has furnished the merchandise and services provided for in the contract the trustor or the legally appointed representative may in writing demand and receive the return of the corpus of the trust, together with any income accrued in the trust, less the revocation fee provided for in Section 7735; provided, however, that if and when the trustor becomes otherwise eligible, or in order to become eligible, for public social services, as provided in Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, he or she may agree, at his or her option, that the trust shall be irrevocable in order to avail himself or herself of the provisions of Section 11158 or Section 12152 of the Welfare and Institutions Code. The delivery of the corpus of the trust and the accumulated income to the funeral establishment performing the services, trustor or beneficiary pursuant to the terms of this article and the trust agreement herein referred to, shall relieve the trustee of any further liabilities with regard to those funds or income therefrom.

SEC. 43. Section 7737.3 of the Business and Professions Code is amended to read:

7737.3. All commingled preneed trust funds held by a funeral establishment shall be subject to an annual, independent certified financial audit with a copy of the audit to be submitted to the board for review within 120 days of the close of the fund's fiscal year. Any findings of noncompliance with existing law regarding preneed trust funds shall be identified by the auditor in a separate report for review and action by the board. Audits and reports of noncompliance shall be filed simultaneously.

SEC. 44. Section 7738 of the Business and Professions Code is amended to read:

7738. A licensed funeral establishment that is also a licensed cemetery authority shall not deposit any money or securities received in connection with preneed funeral arrangements in a special endowment care fund as provided in Article 4 (commencing with Section 8775) of Chapter 5 of Part 3 of Division 8 of the Health and Safety Code, nor shall a licensed funeral establishment permit the deposit of any money or securities received in connection with a special endowment care fund into a preneed funeral trust fund. Nothing in this section shall require the liquidation or conversion of any lawful investment existing on December 31, 1981.

SEC. 45. Section 7739 of the Business and Professions Code is amended to read:

7739. Any person willfully violating the provisions of this article or any of them shall be punishable either by imprisonment in the



county jail for a period not exceeding six months, or by fine not exceeding five hundred dollars (\$500), or by both imprisonment and fine, or by imprisonment in the state prison for 16 months, or two or three years. If the violator is a funeral establishment licensee, he or she shall also be subject to disciplinary action as provided in Article 6 (commencing with Section 7686).

SEC. 46. Section 7740.5 of the Business and Professions Code is amended to read:

7740.5. A funeral establishment shall pay to the board the fee fixed by this chapter for filing with the board any report on preneed trust funds required by rules and regulations of the board adopted pursuant to Section 7740.

SEC. 47. Section 7745 of the Business and Professions Code is amended to read:

7745. Every funeral establishment shall present to the survivor of the deceased who is handling the funeral arrangements or the responsible party a copy of any preneed agreement which has been signed and paid for in full, or in part by, or on behalf of the deceased and is in the possession of the funeral establishment. The copy may be presented in person, by certified mail, or by facsimile transmission, as agreed upon by the survivor of the deceased or the responsible party. A funeral establishment that knowingly fails to present a preneed agreement to the survivor of the deceased or the responsible party shall be liable for a civil fine equal to three times the cost of the preneed agreement, or one thousand dollars (\$1,000), whichever is greater.

SEC. 48.

SEC. 49. The powers and duties of the Funeral Directors and Embalmers Board, as described in the act enacting this section, shall be subject to Section 102.1 of the Business and Professions Code.

SEC. 50. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

