

ARTICLE 54 135
Cemeteries MORTUARIES AND CREMATORIES

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MORTUARY SCIENCE CODE

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PART 1
MORTUARY SCIENCE CODE

1 **12-135-101. [Formerly 12-54-101] Short title.** THE SHORT TITLE OF this article shall
2 ~~be known and may be cited as 135~~ IS the "Mortuary Science Code".

3
4 **12-135-102. Applicability of common provisions.** ARTICLES 1 AND 20 OF THIS TITLE
5 12 APPLY, ACCORDING TO THEIR TERMS, TO THIS ARTICLE 135.

6
7 **12-135-103. [Formerly 12-54-102] Definitions.** As used in this article *135*, unless
8 the context otherwise requires:

9 (1) "Alternative container" means a nonmetal receptacle or enclosure, without
10 ornamentation or a fixed interior lining, that is designed for the encasement of human
11 remains and is made of fiberboard, pressed wood, composition materials, or other similar
12 materials.

13 (2) "Casket" means a rigid container that is designed for the encasement of human
14 remains and is ornamented and lined with fabric.

15 (3) "Cremated remains" or "cremains" means all human remains recovered after
16 cremation, including pulverization, that leaves only bone fragments that have been reduced
17 to unidentifiable dimensions.

18 (4) "Cremation" or "cremate" means the reduction of human remains to essential
19 elements, the processing of the remains, and the placement of the processed remains in a
20 cremated remains container.

21 ~~(4.3)~~ (5) "Cremation chamber" means the enclosed space inside of which human
22 remains are cremated.

23 ~~(4.5)~~ (6) "Cremation container" means a container in which the human remains are
24 transported to the crematory and intended to be placed in the cremation chamber.

25 ~~(4.7)~~ (7) "Cremationist" means a person who cremates or prepares for cremation
26 human remains.

27 ~~(5)~~ (8) "Crematory" means a building, facility, establishment, or structure where

1 human remains are cremated.

2 ~~(5.3)~~ (9) "Custodian" means the person with possession and control of human
3 remains.

4 ~~(5.5)~~ (10) "Designee" means an individual designated by a funeral establishment
5 registered in accordance with section ~~12-54-110~~ *12-135-110* or ~~12-54-303~~ *12-135-303*.

6 ~~(5.7)~~ "Director" means the director of the division of professions and occupations or
7 the director's designee. <{Redundant with definitions common provision, 12-20-102 (6).}>

8 ~~(6)~~ "Division" means the division of professions and occupations created in section
9 ~~24-34-102~~, C.R.S. <{Redundant with definitions common provision, 12-20-102 (7).}>

10 ~~(7)~~ (11) "Embalm" or "embalming" means the disinfection and temporary
11 preservation of human remains by chemically treating the body to reduce the presence and
12 growth of organisms, to retard organic decomposition, or to attempt restoration of the
13 physical appearance.

14 ~~(8)~~ (12) "Embalmer" means any person who embalms, or prepares for embalming,
15 human remains for compensation.

16 ~~(9)~~ (13) "Final disposition" means the disposition of human remains by entombment,
17 burial, cremation, or removal from the state.

18 ~~(10)~~ (14) "Funeral", "funeral service", or "funeral ceremony" means a service or rite
19 commemorating the deceased and at which service or rite the body of the deceased is present.

20 ~~(11)~~ (15) "Funeral director" means a person who, for compensation:

21 (a) Arranges, directs, or supervises funerals, memorial services, or graveside services;

22 or

23 (b) Prepares human remains for final disposition by means other than embalming.

24 ~~(12)~~ (16) "Funeral establishment", "funeral home", or "mortuary" means:

25 (a) An establishment that holds, cares for, or prepares human remains prior to final
26 disposition, including a crematory or embalming room; except that this paragraph (a)
27 SUBSECTION (16)(a) does not apply to establishments in which individuals regularly die;

28 (b) An establishment that holds itself out to the general public as providing funeral
29 goods and services;

30 (c) Facilities used to hold, care for, or prepare human remains prior to final
31 disposition; except that this paragraph (c) SUBSECTION (16)(c) does not apply to facilities in
32 which individuals regularly die; or

33 (d) An establishment that provides funeral or memorial services to the public for
34 compensation.

35 ~~(13)~~ (17) "Funeral goods" means goods that are sold or offered for sale directly to the
36 public for use in connection with funeral or cremation services.

37 ~~(14)~~ (18) "Funeral services" means:

38 (a) Preparation of human remains for final disposition; except that this paragraph (a)
39 SUBSECTION (18)(a) does not apply to cremation;

40 (b) Arrangement, supervision, or conduct of the funeral ceremony or the final

1 disposition of human remains; or

2 (c) Transportation of human remains to or from a funeral establishment.

3 ~~(14.2)~~ (19) "Human remains" means the physical remains of a dead human.

4 ~~(14.5)~~ (20) "Implanted device" means a mechanical device that may explode or cause
5 damage to crematory equipment.

6 ~~(15)~~ (21) "Memorial service" means a service or rite commemorating the deceased
7 and at which service or rite the body of the deceased is not present.

8 ~~(16)~~ (22) "Mortuary science practitioner" means a person who, for compensation,
9 does the following or offers to do the following:

10 (a) Embalms or cremates human remains;

11 (b) Arranges, directs, or supervises funerals, memorial services, or graveside services;

12 or

13 (c) Prepares human remains for final disposition.

14 ~~(17)~~ (23) "Next of kin" means a family member or members of the deceased who,
15 under Colorado law, have legal authority over the disposition of human remains.

16 ~~(17.5)~~ (24) "Ossuary" means a receptacle used for the communal placement of
17 cremated remains, without using an urn or other container, in which cremated remains are
18 commingled with other cremated remains.

19 ~~(18)~~ (25) "Preneed contract" means a preneed contract as defined in section
20 10-15-102 (13). ~~C.R.S.~~

21 ~~(19)~~ (26) "Preparation of the body" means embalming, washing, disinfecting,
22 shaving, dressing, restoring, casketing, positioning, caring for the hair or applying
23 cosmetics to human remains.

24 ~~(20)~~ (27) "Processing" means the removal of foreign objects from cremated remains
25 and the reduction of ~~such~~ THE remains by mechanical means to granules appropriate for final
26 disposition.

27
28 **12-135-104. [Formerly 12-54-103] Funeral establishment.** (1) A funeral
29 establishment shall have the appropriate equipment and personnel to adequately provide the
30 funeral services it contracts to provide and shall provide written notice to the consumer
31 specifying any subcontractors or agents routinely handling or caring for human remains. To
32 comply, the notice must be given when the consumer inquires about the goods or services the
33 funeral establishment provides and must include the names and addresses of the
34 subcontractors, agents, or other providers; except that, if the inquiry is over the telephone,
35 the written notice must be provided when the customer finalizes the arrangements for goods
36 or services with the funeral establishment.

37 (2) A funeral establishment shall retain all documents and records concerning the
38 final disposition of human remains for at least seven years after the disposition.

39
40 **12-135-105. [Formerly 12-54-104] Unlawful acts.** (1) It is unlawful:

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

5 (b) To discriminate because of race, creed, color, religion, disability, sex, sexual
6 orientation, marital status, national origin, or ancestry in the provision of funeral services;

7 (c) For any public officer or employee or any other person having a professional
8 relationship with the decedent to approve or cause the final disposition of human remains in
9 violation of this article **135**;

10 (d) For a person in the business of paying for or providing death benefits, funerals,
11 funeral ceremonies, final dispositions, or preneed contracts to pay or provide benefits in a
12 manner that deprives the next of kin or legal representative of the right to use those payments
13 or benefits at a funeral establishment of his or her choice;

14 (e) For a funeral director, mortuary science practitioner, embalmer, funeral
15 establishment, or facility in which people regularly die or ~~such~~ THE person's or facility's agent
16 to engage in a business practice that interferes with the freedom of choice of the general
17 public to choose a funeral director, mortuary science practitioner, embalmer, or funeral
18 establishment;

19 (f) For a county coroner to violate section 30-10-619; ~~C.R.S.~~;

20 (g) To transport or otherwise transfer by common carrier human remains unless:

21 (I) A funeral director, mortuary science practitioner, or embalmer has embalmed or
22 hermetically sealed the body for transportation and complies with applicable common carrier
23 law; or

24 (II) The transport or transfer is to a funeral establishment, funeral director, or
25 embalmer within the state of Colorado;

26 (h) To advertise as holding a degree, a certificate of registration, a professional
27 license, or a professional certification issued by a state, political subdivision, or agency
28 unless the person holds ~~such~~ THE degree, registration, license, or certification and it is current
29 and valid at the time of advertisement;

30 (i) For a funeral director, mortuary science practitioner, or embalmer to admit or
31 permit any person to visit the embalming, cremation, or preparation room during the time a
32 body is being embalmed, cremated, or prepared for final disposition, unless the person:

33 (I) Is a funeral director, mortuary science practitioner, cremationist, or embalmer;

34 (II) Is an authorized employee of a funeral establishment;

35 (III) Has the written consent of the next of kin of ~~such~~ THE deceased person or of a
36 person having legal authority to give ~~such~~ permission in the absence of any next of kin;

37 (IV) Enters by order of a court of competent jurisdiction or ~~is a peace officer level~~
38 ~~I, Ia, II, III, or IIIa~~ AS DESCRIBED IN ARTICLE 2.5 OF TITLE 16;

39 (V) Is a student enrolled in a mortuary science program;

40 (VI) Is a registered or licensed nurse with a medical reason to be present;

- 1 (VII) Is a licensed physician or surgeon with a medical reason to be present;
- 2 (VIII) Is a technician representing a procurement organization as defined in section
- 3 15-19-202 for purposes of an anatomical gift; or
- 4 (IX) Is the director or the director's designee;
- 5 (j) To refuse to properly and promptly release human remains or cremated remains
- 6 to the custody of the person who has the legal right to effect ~~such~~ THE release whether or not
- 7 any costs have been paid;
- 8 (k) To tell a person that a casket is required when the expressed wish is for immediate
- 9 cremation;
- 10 (l) To embalm or cremate human remains without obtaining permission from the
- 11 person with the right of final disposition unless otherwise required by section ~~12-54-105~~
- 12 **12-135-106**;
- 13 (m) To prohibit, hinder, or restrict or to attempt to prohibit, hinder, or restrict the
- 14 following:
- 15 (I) The offering or advertising of immediate cremation, advance funeral
- 16 arrangements, or low-cost funerals;
- 17 (II) Arrangements between memorial societies and funeral industry members; or
- 18 (III) A funeral service industry member from disclosing accurate information
- 19 concerning funeral merchandise and services;
- 20 (n) To engage in willfully dishonest conduct or commit negligence in the practice of
- 21 embalming, funeral directing, or providing for final disposition that defrauds or causes injury
- 22 or is likely to defraud or cause injury;
- 23 (o) To fail to include in a contract for funeral services the following statement:
- 24 "INQUIRIES REGARDING YOUR FUNERAL AGREEMENT MAY BE DIRECTED TO
- 25 THE DEPARTMENT OF REGULATORY AGENCIES", along with the current address or
- 26 telephone number of the department; ~~of regulatory agencies~~;
- 27 (p) For a person owning an indirect interest with more than ten-percent ownership in
- 28 a funeral establishment or for a person owning a direct interest in a funeral establishment to
- 29 own an indirect interest with more than ten-percent ownership in a nontransplant tissue bank,
- 30 as defined in section ~~12-54.5-101 (5)~~ **12-140-102 (5)**, or to own a direct interest in a
- 31 nontransplant tissue bank.
- 32 (2) For purposes of this section only, "next of kin" shall not include any person who
- 33 is arrested on suspicion of having committed, is charged with, or has been convicted of, any
- 34 felony offense specified in part 1 of article 3 of title 18 ~~C.R.S.~~, involving the death of the
- 35 deceased person. If charges are not brought, charges are brought but dismissed, or the person
- 36 charged is acquitted of the alleged crime before final disposition of the deceased person's
- 37 body, this subsection (2) shall not apply.
- 38

39 **12-135-106. [Formerly 12-54-105] Care of bodies required - public health.** A

40 funeral establishment shall embalm, refrigerate, cremate, bury, or entomb human remains

1 within twenty-four hours after taking custody of the remains.

2
3 **12-135-107. [Formerly 12-54-106] Consumer protection.** (1) A funeral
4 establishment whose services are purchased shall make every reasonable attempt to fulfill
5 the expressed needs and desires of the person with the right of final disposition, and shall
6 make a full disclosure of all its available services and merchandise to the arrangers prior to
7 selection of the casket.

8 (2) Before a person selects the funeral, the funeral establishment shall provide a
9 written itemized list of the prices of all available merchandise and individual services at that
10 funeral establishment. Full disclosure shall also be made in the case of a memorial service
11 and as to use of funeral merchandise and facilities. In no event shall ~~such~~ THE person be
12 required to purchase services or products contained on the itemized list that are not desired
13 for the funeral unless ~~such~~ THE services or goods are required by law.

14 (3) Any statements of legal or practical requirements shall be complete and accurate,
15 including the conditions under which embalming is required or advisable. Representations
16 as to the use or necessity of a casket or alternative container in connection with a funeral or
17 alternatives for final disposition shall be truthful and shall disclose all pertinent information.

18 (4) When quoting funeral prices, either orally, by use of a disclosure statement, or by
19 a final bill, the funeral establishment shall only list those items as cash advances or
20 accommodation items that are paid for or could be paid for by the next of kin in the same
21 amount that is paid by the funeral home.

22
23 **12-135-108. [Formerly 12-54-107] Violations and penalties.** Any person who
24 violates this part 1 or part 3 of this article *135* is guilty of a misdemeanor and, upon
25 conviction, shall be punished by a fine of not more than five thousand dollars or by
26 imprisonment in the county jail for not more than twenty-four months or by both such fine
27 and imprisonment.

28
29 **12-135-109. [Formerly 12-54-108] Exceptions - safe harbor.** (1) This part 1 shall
30 not apply to, or in any way interfere with, the duties of the following persons:

31 (a) An officer of a public institution;

32 (b) An officer of a medical college, county medical society, anatomical association,
33 or college of embalming; or

34 (c) A person acting under the authority of ~~part 2 of article 34 of this title~~ PART 3 OF
35 ARTICLE 19 OF TITLE 15.

36 (2) (a) This part 1 shall not apply to, nor in any way interfere with, any custom or rite
37 of any religious sect in the burial of its dead, and the members and followers of the religious
38 sect may continue to provide memorial services for, care for, prepare, and bury the bodies
39 of deceased members of the religious sect, free from any term or condition, or any provision
40 of this part 1, and are not subject to this part 1, so long as the human remains are refrigerated,

1 frozen, embalmed, interred, or cremated within seven days after death.

2 (b) If human remains are refrigerated or embalmed pursuant to ~~paragraph (a) of this~~
3 ~~subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION, the body must be interred, frozen, or
4 cremated within thirty days after death unless the coroner authorizes otherwise in writing.
5 The coroner shall not permit an exception to this ~~paragraph (b)~~ SUBSECTION (2)(b) unless the
6 applicant can demonstrate a legitimate delay caused by unforeseen uncontrollable
7 circumstances or by a criminal investigation.

8 (c) Notwithstanding this subsection (2), upon the receipt of evidence that the human
9 remains likely contained a serious contagious disease, the state department of public health
10 and environment, the state board of health, or a local department of health may issue an order
11 overruling this subsection (2).

12 (3) A person who sells or offers to sell caskets, urns, or other funeral goods, but does
13 not provide funeral services, shall not be subject to this article **135**.

14 (4) If a funeral director, mortuary science practitioner, or embalmer has acted in good
15 faith, the funeral director, mortuary science practitioner, or embalmer may rely on a signed
16 statement from a person with the right of final disposition under section 15-19-106 ~~C.R.S.~~,
17 that:

18 (a) The person knows of no document expressing the deceased's wishes for final
19 disposition that qualifies to direct the final disposition under section 15-19-104; ~~C.R.S.~~;

20 (b) The person has made a reasonable effort under section 15-19-106 ~~C.R.S.~~, to
21 contact each person with the right of final disposition and to learn his or her wishes; and

22 (c) The person knows of no objections to the final disposition.

23 (5) (a) (I) A funeral establishment, funeral director, or mortuary science practitioner
24 may dispose of cremated remains at the expense of the person with the right of final
25 disposition one hundred eighty days after cremation if the person was given clear prior notice
26 of this ~~paragraph (a)~~ SUBSECTION (5)(a) and a reasonable opportunity to collect the cremated
27 remains, the exact location of the final disposition and the costs associated with the final
28 disposition are recorded, and the recovery of the cremated remains is possible. Recovery of
29 costs is limited to a reasonable amount of the costs actually expended by the funeral
30 establishment, funeral director, or mortuary science practitioner.

31 (II) A funeral establishment, funeral director, or mortuary science practitioner may
32 comply with this ~~paragraph (a)~~ SUBSECTION (5)(a) by transferring the cremated remains and
33 the records showing the funeral establishment and the deceased's name, date of birth, and
34 next of kin for final disposition to a facility or place normally used for final disposition if the
35 new custodian can comply with this ~~paragraph (a)~~ SUBSECTION (5)(a).

36 (III) If cremated remains are not claimed by the person with the right of final
37 disposition within three years after cremation, a funeral establishment, funeral director, or
38 mortuary science practitioner may dispose of the remains in an unrecoverable manner by
39 placing the remains in an ossuary or by scattering the remains in a dedicated cemetery,
40 scattering garden, or consecrated ground used exclusively for these purposes.

1 (IV) The custodian is not liable for the loss or destruction of records required to be
2 kept by this ~~paragraph (a)~~ SUBSECTION (5)(a) if the loss or destruction was not caused by the
3 custodian's negligence.

4 (b) If the person was cremated prior to July 1, 2003, and the funeral director or
5 mortuary science practitioner reasonably attempts to notify the person with the right of final
6 disposition of the provisions of this subsection (5), the cremated remains may be disposed
7 of in accordance with this subsection (5) notwithstanding a failure to provide the notice of
8 the provisions of this subsection (5) to the person with the right of final disposition prior to
9 disposing of the remains.

10
11 ~~**12-54-109. Effect of criminal charges. (Repealed)**~~

12
13 **12-135-110. [Formerly 12-54-110] Registration required.** (1) Unless practicing at
14 a registered funeral establishment pursuant to this section, a person shall not practice as, or
15 offer the services of, a mortuary science practitioner, funeral director, or embalmer, nor shall
16 the funeral establishment sell or offer to sell funeral goods and services to the public.

17 (2) (a) Each funeral establishment shall register with the director using forms as
18 determined by the director. The registration shall include the following:

- 19 (I) The specific location of the funeral establishment;
- 20 (II) The full name and address of the designee appointed pursuant to subsection (3)
21 of this section;
- 22 (III) The date the funeral establishment began doing business; and
- 23 (IV) A list of each of the following services provided at each funeral establishment
24 location:
 - 25 (A) Refrigerating or holding human remains;
 - 26 (B) Embalming human remains;
 - 27 (C) Transporting human remains to or from the funeral establishment or the place of
28 final disposition;
 - 29 (D) Providing funeral goods or services to the public; and
 - 30 (E) Selling preneed contracts.

31 (b) Each funeral establishment registration shall be renewed, according to a schedule
32 established by the director IN ACCORDANCE WITH SECTION 12-20-202 (1), in a form as
33 determined by the director.

34 (c) If, after initial registration, the funeral establishment provides a service listed in
35 ~~subparagraph (IV) of paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a)(IV) OF THIS
36 SECTION that was not included in the initial registration, the funeral establishment shall
37 submit an amended registration within thirty days after beginning to provide the new service.

38 (d) If, after initial registration, the funeral establishment appoints a new designee, the
39 funeral establishment shall submit an amended registration within thirty days after appointing
40 the designee.

1 (e) ~~The director may establish registration fees, renewal fees, and delinquency fees~~
2 ~~for reinstatement pursuant to section 24-34-105, C.R.S. If a funeral establishment fails to~~
3 ~~renew the registration in accordance with the schedule established by the director, the~~
4 ~~registration shall expire~~ SECTIONS 12-20-105 AND 12-20-202 (1) AND (2) GOVERN FEES FOR,
5 AND RENEWAL, EXPIRATION, AND REINSTATEMENT OF, REGISTRATIONS UNDER THIS PART 1
6 <{Redundant with 12-20-105 and 12-20-202 (1) & (2). Recommend amending as
7 indicated.}>.

8 (3) Each funeral establishment shall appoint an individual as the designee of the
9 funeral establishment. A designee shall:

- 10 (a) Be at least eighteen years of age;
11 (b) Have at least two years' experience working for a funeral establishment;
12 (c) Be employed by the registered funeral establishment that the designee represents;
13 (d) Have the authority within the funeral establishment's organization to require that
14 personnel comply with this article **135**; and

15 (e) Not be designated for more than one funeral establishment unless the additional
16 establishment is operated under common ownership and management and no funeral
17 establishment is more than sixty miles from another establishment held under the same
18 ownership conditions.

19 (4) The designee shall require each person employed at the funeral establishment to
20 demonstrate evidence of compliance with section ~~12-54-111~~ **12-135-111**. The designee shall
21 retain the records of ~~such~~ THE EVIDENCE OF COMPLIANCE so long as the person is employed
22 at the funeral establishment.

23 (5) This section shall not require the registration of a nonprofit organization that only
24 provides education or support to an individual who intends to provide for final disposition
25 of human remains.

26
27 **12-135-111. [Formerly 12-54-111] Title protection.** (1) A person shall not
28 advertise, represent, or hold oneself out as or use the title of a mortuary science practitioner
29 unless the person:

30 (a) Has at least two thousand hours practicing or interning as a mortuary science
31 practitioner, including, without limitation, experience in cremation and embalming;

32 (b) Has graduated with a certificate, diploma, or degree in mortuary science from:
33 (I) A program accredited by the American Board of Funeral Service Education or its
34 successor, if the successor is approved by the director, and the program is part of a school
35 of higher education; or

36 (II) A school of higher education accredited by the American Board of Funeral
37 Service Education or its successor, if the successor is approved by the director; and

38 (c) Has taken the mortuary science test, known as the national board examination,
39 administered by the international conference of funeral service examining boards or its
40 successor, if the successor is approved by the director, and received a passing score.

1 (2) A person shall not advertise, represent, or hold oneself out as or use the title of
2 a funeral director unless the applicant:

3 (a) Has at least two thousand hours practicing or interning as a funeral director; and

4 (b) Has directed at least fifty funerals or graveside services.

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

7 (a) Has at least four thousand hours practicing or interning as an embalmer; and

8 (b) Has embalmed at least fifty human remains.

9 (4) For purposes of this section, intern or practice hours from Colorado or any other
10 state shall meet the standards set by this section.

11
12 **12-135-112. [Formerly 12-54-112] Standards of practice - embalming -**
13 **transporting.** (1) A funeral establishment that performs embalming shall:

14 (a) Maintain a sanitary preparation room with sanitary flooring, drainage, and
15 ventilation;

16 (b) Employ universal biological hazard precautions;

17 (c) Employ reasonable care to minimize the risk of transmitting communicable
18 diseases from human remains;

19 (d) Be equipped with instruments and supplies necessary to protect the health and
20 safety of the public and employees of the funeral establishment; and

21 (e) Transport human remains in a safe and sanitary manner.

22 (2) A funeral establishment that transports human remains shall:

23 (a) Use a motor vehicle that is appropriate for the transportation of human remains;
24 and

25 (b) Transport human remains in a safe and sanitary manner.

26 (3) A funeral establishment shall remove any implanted device in human remains
27 before transporting the body to a crematory.

28
29 **12-135-113. [Formerly 12-54-113] Custody and responsibility - rules.** (1) A
30 funeral establishment shall not, through its managers, employees, contractors, or agents, take
31 custody of human remains without an attestation of positive identification on a form
32 promulgated by the director by rule by:

33 (a) The next of kin;

34 (b) The county coroner or the county coroner's designee; or

35 (c) An authorized person at the care facility where the deceased died.

36 (2) A funeral establishment is responsible for identifying and tracking human remains
37 from the time it takes custody of human remains until the:

38 (a) Final disposition has occurred or the remains are returned to the person who has
39 the right of final disposition;

40 (b) Human remains are released in accordance with the instructions given by the

1 person who has the right of final disposition; or

2 (c) Remains are released to another funeral establishment, crematory, repository, or
3 entity as authorized by the person who has the right of final disposition.

4 (3) The director shall adopt rules implementing this section that:

5 (a) Establish what constitutes custody;

6 (b) Define "care facility", "repository", and "entity";

7 (c) Establish who is authorized to identify human remains at a care facility for a
8 funeral establishment; and

9 (d) Prescribe the minimum standards for the positive identification and chain of
10 custody of human remains. A funeral establishment may use the establishment's own
11 procedures if the procedures meet or exceed the minimum standards of the rule promulgated
12 by the director.

13
14 PART 2
15 ASSESSMENT OF MORTUARIES
16

17 **12-135-201. [Formerly 12-54-201] Mortuaries in cemeteries not exempt.** No
18 person, firm, association, partnership, or corporation engaged in the ownership, operation,
19 or management of a cemetery or mausoleum in this state ~~which~~ THAT is exempt from
20 payment of general property taxes, shall, either directly or indirectly, own, manage, conduct,
21 or operate a funeral home or mortuary in ~~such~~ THE cemetery or mausoleum, or adjacent
22 thereto and in connection therewith, unless ~~said~~ THE cemetery or mausoleum and funeral
23 home or mortuary is listed for assessment purposes. The attorney general, county attorney,
24 or any interested party may maintain injunction proceedings to prevent any violation of this
25 section.

26
27 PART 3
28 CREMATION
29

30 **12-135-301. [Formerly 12-54-301] Unlawful acts.** (1) It is unlawful for a crematory:
31 (a) To discriminate because of race, creed, color, religion, sex, marital status, sexual
32 orientation, or national origin in the provision of funeral services;

33 (b) To approve or cause the final disposition of human remains in violation of this
34 article *135*;

35 (c) To engage in a business practice that interferes with the freedom of choice of the
36 general public to choose a funeral director, mortuary science practitioner, cremationist,
37 embalmer, or funeral establishment;

38 (d) To advertise as holding a degree, a certificate of registration, a professional
39 license, or a professional certification issued by a state, political subdivision, or agency
40 unless the person holds such THE degree, registration, license, or certification and it is current

1 and valid at the time of advertisement;

2 (e) To admit or permit any person to visit the crematory or preparation room during
3 the time a body is being cremated or prepared for final disposition unless the person:

4 (I) Is a funeral director, mortuary science practitioner, or cremationist;

5 (II) Is an authorized employee of a crematory;

6 (III) Has the written consent of the next of kin of the deceased person or of a person
7 having legal authority to give consent in the absence of any next of kin;

8 (IV) Enters by order of a court of competent jurisdiction or ~~is a peace officer level~~
9 ~~I, Ia, II, III, or IIIa~~ AS DESCRIBED IN ARTICLE 2.5 OF TITLE 16;

10 (V) Is a student or intern enrolled in a mortuary science program;

11 (VI) Is a registered or licensed nurse with a medical reason to be present;

12 (VII) Is a licensed physician or surgeon with a medical reason to be present;

13 (VIII) Is a technician representing a procurement organization as defined in section
14 15-19-202 for purposes of an anatomical gift; or

15 (IX) Is the director or the director's designee;

16 (f) To refuse to properly and promptly release human remains to the custody of the
17 person who has the legal right to effect the release, whether or not any costs have been paid,
18 unless there is a good-faith dispute over who controls the right of final disposition;

19 (g) To cremate human remains without obtaining permission from the person with
20 the right of final disposition;

21 (h) To prohibit, hinder, or restrict, or attempt to prohibit, hinder, or restrict, the
22 following:

23 (I) The offering or advertising of immediate cremation, advance funeral
24 arrangements, low-cost funerals, or low-cost cremations;

25 (II) Arrangements between memorial societies and funeral industry members; or

26 (III) A funeral service industry member from disclosing accurate information
27 concerning funeral merchandise and services;

28 (i) To cremate human remains in a facility unless the facility is registered pursuant
29 to section ~~12-54-303~~ **12-135-303**;

30 (j) To refuse to accept human remains that are not in a casket or to require human
31 remains to be placed in a casket at any time;

32 (k) To allow a crematory operator to perform services beyond an operator's
33 competency, training, or education;

34 (l) To engage in willfully dishonest conduct or commit negligence in the practice of
35 cremation or providing for final disposition that defrauds or causes injury or is likely to
36 defraud or cause injury.

37 (2) For purposes of this section only, "next of kin" shall not include any person who
38 is arrested on suspicion of having committed, is charged with, or has been convicted of, any
39 felony offense specified in part 1 of article 3 of title 18 ~~C.R.S.~~, involving the death of the
40 deceased person. This subsection (2) shall not apply if charges are not brought, charges are

1 brought but dismissed, or the person charged is acquitted of the alleged crime before final
2 disposition of the deceased person's body.

3 (3) It is unlawful for a person owning an indirect interest with more than ten-percent
4 ownership in a crematory or for a person owning a direct interest in a crematory to own an
5 indirect interest with more than ten-percent ownership in a nontransplant tissue bank, as
6 defined in section ~~12-54.5-101~~ (5) 12-140-102 (5), or to own a direct interest in a
7 nontransplant tissue bank.

8
9 **12-135-302. [Formerly 12-54-302] Exceptions - safe harbor.** (1) If a crematory has
10 acted in good faith, the crematory may rely on a signed statement from a person with the right
11 of final disposition under section 15-19-106 ~~C.R.S.~~, that:

12 (a) The person knows of no document expressing the deceased person's wishes for
13 final disposition that qualifies to direct the final disposition under section 15-19-104; ~~C.R.S.~~;

14 (b) The person has made a reasonable effort under section 15-19-106 ~~C.R.S.~~, to
15 contact each person with the right of final disposition and to learn his or her wishes; and

16 (c) The person knows of no objections to the final disposition.

17 (2) (a) (I) A crematory may dispose of cremains at the expense of the person with the
18 right of final disposition one hundred eighty days after cremation if the person was given
19 clear prior notice of this ~~paragraph (a)~~ SUBSECTION (2)(a) and a reasonable opportunity to
20 collect the cremains; the exact location of the final disposition and the costs associated with
21 the final disposition are recorded; and the recovery of the cremains is possible. Recovery of
22 costs is limited to a reasonable amount of the costs actually expended by the crematory.

23 (II) A crematory may comply with this ~~paragraph (a)~~ SUBSECTION (2)(a) by
24 transferring the cremated remains and the records showing the funeral establishment and the
25 deceased's name, date of birth, and next of kin for final disposition to a facility or place
26 normally used for final disposition if the new custodian can comply with this ~~paragraph (a)~~
27 SUBSECTION (2)(a).

28 (III) If cremated remains are not claimed by the person with the right of final
29 disposition within three years after cremation, a crematory may dispose of the remains in an
30 unrecoverable manner by placing the remains in an ossuary or by scattering the remains in
31 a dedicated cemetery, scattering garden, or consecrated ground used exclusively for these
32 purposes.

33 (IV) The custodian is not liable for the loss or destruction of records required to be
34 kept by this ~~paragraph (a)~~ SUBSECTION (2)(a) if the loss or destruction was not caused by the
35 custodian's negligence.

36 (b) If the deceased was cremated prior to July 1, 2003, and the crematory reasonably
37 attempts to notify the person with the right of final disposition of the provisions of this
38 subsection (2), the remains may be disposed of in accordance with this subsection (2),
39 notwithstanding a failure to provide the notice of the provisions of this subsection (2) to the
40 person with the right of final disposition prior to disposing of the remains.

1 (3) (a) This part 3 shall not apply to, nor interfere with, any custom or rite of a
2 religious sect in the final disposition of its dead, and the members and followers of the
3 religious sect may continue to provide memorial services for, care for, prepare, and cremate
4 the bodies of deceased members of the religious sect if the human remains are refrigerated,
5 frozen, or cremated within seven days after death.

6 (b) If human remains are refrigerated pursuant to ~~paragraph (a) of this subsection (3)~~
7 ~~SUBSECTION (3)(a) OF THIS SECTION~~, the body must be cremated within thirty days after death
8 unless the coroner authorizes otherwise in writing. The coroner shall not permit an exception
9 to this ~~paragraph (b)~~ ~~SUBSECTION (3)(b)~~ unless the applicant can demonstrate a legitimate
10 delay caused by unforeseen, uncontrollable circumstances or by a criminal investigation.

11
12 **12-135-303. [Formerly 12-54-303] Registration required.** (1) Unless practicing at
13 a registered crematory under this section and except as provided in section ~~12-54.5-104 (3)~~
14 **12-140-105 (3)**, a person shall not practice as, or offer the services of, a cremationist, nor
15 shall the crematory sell or offer to sell funeral goods and services to the public.

16 (2) (a) Each crematory shall register with the director using forms as determined by
17 the director. The registration shall include the following:

18 (I) The specific location of the crematory;

19 (II) The full name and address of the designee appointed pursuant to subsection (3)
20 of this section;

21 (III) The date the crematory began doing business; and

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

23 (A) Refrigerating or holding human remains;

24 (B) Transporting human remains to or from the crematory or the place of final
25 disposition;

26 (C) Providing funeral goods or services to the public;

27 (D) Cremating human remains; and

28 (E) Selling preneed contracts.

29 (b) Each crematory registration shall be renewed, according to a schedule established
30 by the director, in a form as determined by the director.

31 (c) If, after initial registration, the crematory provides a service listed in ~~subparagraph~~
32 ~~(IV) of paragraph (a) of this subsection (2)~~ ~~SUBSECTION (2)(a)(IV) OF THIS SECTION~~ that was
33 not included in the initial registration, the crematory shall submit an amended registration
34 within thirty days after beginning to provide the new service.

35 (d) If, after initial registration, the crematory appoints a new designee, the crematory
36 shall submit an amended registration within thirty days after appointing the designee.

37 (e) ~~The director may establish registration fees, renewal fees, and delinquency fees~~
38 ~~for reinstatement pursuant to section 24-34-105, C.R.S. If a crematory fails to renew the~~
39 ~~registration in accordance with the schedule established by the director, the registration shall~~
40 ~~expire~~ SECTIONS 12-20-105 AND 12-20-202 (1) AND (2) GOVERN FEES FOR, AND RENEWAL,

1 EXPIRATION, AND REINSTATEMENT OF, REGISTRATIONS UNDER THIS PART 1. <{Redundant
2 with 12-20-105 and 12-20-202 (1) & (2). Recommend amending as indicated.}>.

3 (3) Each crematory shall appoint an individual as the designee of the crematory. A
4 designee shall:

- 5 (a) Be at least eighteen years of age;
- 6 (b) Have at least two years' experience working for a crematory;
- 7 (c) Be employed by the registered crematory that the designee represents;
- 8 (d) Have the authority within the crematory's organization to require that personnel

9 comply with this article *135*; and

10 (e) Not be designated for more than one crematory unless the additional establishment
11 is operated under common ownership and management and no crematory is more than sixty
12 miles from another establishment held under the same ownership conditions.

13 (4) The designee shall require each person employed at the crematory to demonstrate
14 evidence of compliance with section ~~12-54-304~~ *12-135-304*. The designee shall retain the
15 records of ~~such~~ THE EVIDENCE OF COMPLIANCE so long as the person is employed at the
16 crematory.

17 (5) This section shall not require the registration of a nonprofit organization that only
18 provides education or support to an individual who intends to provide for final disposition
19 of human remains.

20
21 **12-135-304. [Formerly 12-54-304] Title protection.** A person shall not advertise,
22 represent, or hold oneself out as or use the title of a cremationist unless the applicant has at
23 least five hundred hours practicing or interning as a cremationist and has cremated at least
24 fifty human remains.

25
26 **12-135-305. [Formerly 12-54-305] Records and receipts.** (1) The crematory shall
27 furnish to a person who delivers human remains to the crematory a receipt, which shall be
28 signed by both the crematory's representative and the person who delivers the human
29 remains. The crematory shall retain a copy of the receipt in its records pursuant to subsection
30 (3) of this section. The receipt shall include the following:

- 31 (a) The date and time of the delivery;
- 32 (b) The type of casket or alternative container that was delivered;
- 33 (c) The name of the person who delivered the human remains;
- 34 (d) The name of any business with which the person delivering the human remains
35 is affiliated;
- 36 (e) The name of the person who received the human remains on behalf of the
37 crematory; and
- 38 (f) The name of the decedent.

39 (2) Upon release of cremains, the crematory shall furnish to the person who receives
40 the cremains a receipt, signed by both the crematory's representative and the person who

1 receives the cremains. The crematory shall retain a copy of the receipt in its records pursuant
2 to subsection (1) of this section. The receipt shall include the following:

- 3 (a) The date and time of the release;
- 4 (b) The name of the person to whom the cremains were released;
- 5 (c) The name of the person who released the cremains on behalf of the crematory; and
- 6 (d) The name of the decedent.

7 (3) A crematory shall maintain, for at least five years and available at the registered
8 location, a permanent record of each cremation occurring at the facility and copies of the
9 receipts required by this section.

10
11 **12-135-306. [Formerly 12-54-306] Limited liability.** A crematory shall not be liable
12 for any valuables delivered to the crematory if the crematory exercised reasonable care in
13 handling and protecting the valuables.

14
15 **12-135-307. [Formerly 12-54-307] Standards of practice - cremating.** (1) A
16 crematory shall:

17 (a) Maintain a retort or crematory chamber that is operated at all times in a safe and
18 sanitary manner;

19 (b) Employ reasonable care to minimize the risk of transmitting communicable
20 diseases from human remains;

21 (c) Be equipped with instruments and supplies necessary to protect the health and
22 safety of the public and employees of the crematory; and

23 (d) Transport human remains in a safe and sanitary manner.

24 (2) (a) A crematory shall not cremate human remains unless the crematory has
25 obtained a statement containing the following from a funeral establishment, funeral director,
26 mortuary science practitioner, or the person with the right of final disposition:

27 (I) The identity of the decedent;

28 (II) The date of death;

29 (III) Authorization to cremate the human remains;

30 (IV) The name of the person authorizing cremation and an affidavit or other
31 document in compliance with article 19 of title 15 ~~C.R.S.~~, that the authorization complies
32 with article 19 of title 15; ~~C.R.S.~~;

33 (V) A statement that the human remains do not contain an implanted device;

34 (VI) The name of the person authorized to receive the cremains;

35 (VII) A list of items delivered to the crematory along with the human remains;

36 (VIII) A statement as to whether the next of kin has made arrangements for a viewing
37 or service before cremation and the date and time of any viewing or service;

38 (IX) A copy of the disposition permit; and

39 (X) A signature of a representative of any funeral establishment or the next of kin
40 making arrangements for cremation that the representative has no actual knowledge that

1 contradicts any information required by this ~~paragraph (a)~~ SUBSECTION (2)(a).

2 (b) A person who signs the statement required by ~~paragraph (a) of this subsection (2)~~
3 SUBSECTION (2)(a) OF THIS SECTION shall warrant the truthfulness of the facts contained
4 therein. A person who signs the statement with actual knowledge to the contrary shall be
5 civilly liable.

6 (3) (a) The crematory shall hold human remains in a cremation container and shall
7 not remove the remains.

8 (b) The crematory shall cremate the human remains in a cremation container.

9 (c) A cremation container must:

10 (I) Be composed of materials suitable for cremation;

11 (II) Be able to be closed in order to provide a complete covering for the human
12 remains;

13 (III) Be resistant to leaking or spilling;

14 (IV) Be rigid enough to handle with ease;

15 (V) Provide reasonable protection for the health and safety of crematory employees;
16 and

17 (VI) Be used exclusively for the cremation of human remains.

18 (4) A crematory shall not cremate the human remains of more than one person within
19 the same cremation chamber or otherwise commingle the cremains of multiple human
20 remains unless the next of kin has signed a written authorization. No crematory is civilly
21 liable for commingling the cremains of human remains if the next of kin has signed the
22 written authorization.

23 (5) (a) A crematory shall use a tag to identify human remains and cremains. The tag
24 must be verified, removed, and placed near the cremation chamber control panel prior to
25 cremation. The tag must remain next to the cremation chamber until the cremation is
26 complete.

27 (b) After cremation is complete, all of the cremains and reasonable recoverable
28 residue shall be removed from the cremation chamber and processed as necessary. Anything
29 other than the cremains shall be disposed of unless the next of kin authorizes otherwise.

30 (c) The processed cremains shall be placed in a temporary container or urn. Any
31 cremains that do not fit within ~~such~~ THE enclosure shall be placed in a separate temporary
32 container or urn. Each container shall be marked with the decedent's identity and the name
33 of the crematory. If a temporary container is used, the crematory shall disclose that the
34 temporary container should not be used for permanent storage.

35 (d) If cremated remains are shipped, the crematory shall use a method that employs
36 an internal tracking system and obtains a signed receipt from the person accepting delivery.

37 (6) Cremains shall not be commingled with other cremains in final disposition or
38 scattering without written authorization from the next of kin unless the disposition or
39 scattering occurs within a dedicated cemetery or consecrated grounds used exclusively for
40 ~~such~~ THOSE purposes.

1 (7) (a) A crematory shall not cremate human remains containing an implanted device.
2 If the funeral establishment that had control of the human remains failed to ensure that a
3 device was removed, the funeral establishment is responsible for removing the device.

4 (b) If the person authorizing cremation fails to inform the crematory of the presence
5 of an implanted device, the person shall be solely liable for any resulting damage to the
6 crematory.
7

8 **12-135-308. [Formerly 12-54-308] Custody and responsibility - rules.** (1) A
9 crematory shall not, through its managers, employees, contractors, or agents, take custody
10 of human remains without an attestation of positive identification on a form promulgated by
11 the director by rule by:

12 (a) The next of kin;

13 (b) The county coroner or the county coroner's designee; or

14 (c) An authorized person at the care facility where the deceased died.

15 (2) A crematory is responsible for identifying and tracking human remains from the
16 time it takes custody of human remains until the:

17 (a) Final disposition has occurred or the remains are returned to the person who has
18 the right of final disposition;

19 (b) Human remains are released in accordance with the instructions given by the
20 person who has the right of final disposition; or

21 (c) Remains are released to a funeral establishment, another crematory, repository,
22 or entity as authorized by the person who has the right of final disposition.

23 (3) The director shall adopt rules implementing this section that:

24 (a) Establish what constitutes custody;

25 (b) Define "care facility", "repository", and "entity";

26 (c) Establish who is authorized to identify human remains at a care facility for a
27 funeral establishment; and

28 (d) Prescribe the minimum standards for the positive identification and chain of
29 custody of human remains. A crematory may use the crematory's own procedures if the
30 procedures meet or exceed the minimum standards of the rule promulgated by the director.
31

32 PART 4
33 ADMINISTRATION
34

35 **12-135-401. [Formerly 12-54-401] Powers and duties of the director - rules.**
36 (1) The director may ~~deny, suspend, refuse to renew, issue a letter of admonition or~~
37 ~~confidential letter of concern to, revoke, place on probation,~~ TAKE DISCIPLINARY OR OTHER
38 ACTION AS AUTHORIZED IN SECTION 12-20-404 or limit the scope of practice of the
39 registration of a funeral establishment or crematory under this article *135* that has:
40 <{Redundant with disciplinary authority common provision, 12-20-404. Recommend

1 *amending subsection as indicated.*>

2 (a) Filed an application with the director containing material misstatements of fact
3 or has omitted any disclosure required by this article **135**;

4 (b) Had a registration issued by Colorado, or an equivalent license, registration, or
5 certification issued by another state, to practice mortuary science or to embalm or cremate
6 human remains revoked; or

7 (c) Violated this article **135** or any rule of the director adopted under this article **135**.

8 (2) (a) The director may deny or revoke a registration if the funeral establishment,
9 crematory, or the designee thereof has been convicted of a felony related to another activity
10 regulated under this article **135** or a felony of moral turpitude. The director shall promptly
11 notify the funeral establishment or crematory of ~~such~~ THE revocation.

12 (b) A crematory or funeral establishment whose registration has been revoked ~~shall~~
13 ~~not be eligible for a registration for two years after the effective date of the revocation~~ IS
14 SUBJECT TO THE WAITING PERIOD SPECIFIED IN SECTION 12-20-404 (3).

15 (3) The director may investigate the activities of a funeral establishment or crematory
16 upon his or her own initiative or upon receipt of a complaint or a suspected or alleged
17 violation of this article **135**. SECTION 12-20-403 APPLIES TO INVESTIGATIONS, HEARINGS, AND
18 OTHER PROCEEDINGS UNDER THIS SECTION. <*Recommend adding reference to disciplinary*
19 *procedures common provision and repealing subsections (4) & (5), below, as redundant*
20 *with the disciplinary procedures common provision?*>

21 ~~(4) The director or an administrative law judge appointed pursuant to part 10 of~~
22 ~~article 30 of title 24 C.R.S., shall conduct disciplinary hearings concerning a registration~~
23 ~~issued under this article. Such hearings shall conform to article 4 of title 24, C.R.S.~~

24 ~~(5) (a) The director or an administrative law judge may administer oaths, take~~
25 ~~affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the~~
26 ~~production of all relevant papers, books, records, documentary evidence, and materials in any~~
27 ~~hearing or investigation conducted by the director or an administrative law judge.~~

28 ~~(b) Upon failure of a witness to comply with a subpoena or service of process, the~~
29 ~~district court of the county in which the subpoenaed witness resides or conducts business may~~
30 ~~issue an order requiring the witness to appear before the director or administrative law judge~~
31 ~~and produce the relevant papers, books, records, documentary evidence, testimony, or~~
32 ~~materials in question. Failure to obey the order of the court may be punished as a contempt~~
33 ~~of court. The director or an administrative law judge may apply for such order.~~

34 ~~(6) (4) The director shall keep records of registrations and disciplinary proceedings.~~
35 ~~The records kept by the director shall be open to public inspection in a reasonable time and~~
36 ~~manner determined by the director.~~

37 ~~(7) (5) When the director or administrative law judge deems it appropriate and useful,~~
38 ~~the director or administrative law judge may consult with or obtain a written opinion from~~
39 ~~an appropriate professional organization or association of businesses who offer services~~
40 ~~requiring registration under this article **135** for the purpose of investigating possible~~
41 ~~violations or weighing the appropriate standard of care to be applied to specific events or the~~

1 facts in a hearing being held under this article *135*.

2 (8) (6) (a) The director may promulgate reasonable rules necessary to implement this
3 section, sections 12-54-110, 12-54-111, 12-54-303, and 12-54-304, and this part 4.

4 (b) Before promulgating rules, the director shall seek input and advice from a person,
5 or any state professional organization of persons, offering services that require registration
6 pursuant to this article *135*.

7 (c) Before promulgating rules, the director may seek input and advice from a
8 consumer representative who advocates for consumers affected by this article *135*.

9

10 **12-135-402. [Formerly 12-54-402] Fees.** (†) The director shall establish and collect
11 the fees for a registration issued under this article *135* pursuant to section ~~24-34-105, C.R.S.~~
12 *12-20-105*.

13 (2) ~~All fees collected by the director shall be transmitted to the state treasurer, who
14 shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall
15 make annual appropriations for expenditures of the director required to perform his or her
16 duties under this article, which expenditures shall be made from such appropriations upon
17 vouchers and warrants drawn pursuant to law. The division shall employ, subject to section
18 13 of article XII of the state constitution, such clerical or other assistants as are necessary for
19 the proper performance of its work. <{Redundant with common provisions on depositing
20 fees in DPO cash fund, 12-20-105 (3), and employment of staff, 12-20-103 (4).}>~~

21

22 **12-54-403. Immunity.** ~~The director, any member of the director's staff, any person
23 acting as a witness or consultant to the director, any witness testifying in a proceeding
24 authorized under this article, and any person who lodges a complaint pursuant to this article
25 shall be immune from liability in any civil action for acts occurring while acting within the
26 scope of the person's capacity as director, staff, consultant, witness, or complainant
27 respectively, if the person was acting in good faith, made a reasonable effort to obtain the
28 facts of the matter as to which the person acted, and acted in the reasonable belief that the
29 action taken was warranted by the facts. A person participating in good faith in lodging a
30 complaint or participating in any investigative or administrative proceeding pursuant to this
31 article shall be immune from any civil liability that may result from such participation.
32 <{Redundant with immunity common provision, 12-20-402.}>~~

33

34 **12-54-404. Letters of concern.** ~~The director may issue and send a confidential letter
35 of concern to the funeral establishment or crematory when a complaint or investigation
36 discloses an instance of conduct that does not warrant formal action by the director and, in
37 the opinion of the director, the complaint should be dismissed, but the director has noticed
38 indications of possible errant conduct by the funeral establishment or crematory that could
39 lead to serious consequences if not corrected. <{Redundant with confidential letter of
40 concern common provision, 12-20-404 (5).}>~~

1
2 ~~**12-54-405. Letters of admonition – funeral homes and crematories.**~~ (1) When a
3 complaint or investigation discloses an instance of misconduct that, in the opinion of the
4 director, does not warrant formal action by the director but that should not be dismissed as
5 being without merit, a letter of admonition may be issued and sent to a person by certified
6 mail.

7 (2) ~~When a letter of admonition is sent by the director, the subject shall be advised~~
8 ~~of the right to request that formal disciplinary proceedings be initiated to adjudicate the~~
9 ~~propriety of the conduct upon which the letter of admonition is based. The subject shall make~~
10 ~~the request in writing within twenty days after receipt of the letter.~~

11 (3) ~~If the request for adjudication is timely made, the letter of admonition shall be~~
12 ~~deemed vacated and the matter shall be processed by means of formal disciplinary~~
13 ~~proceedings. <{Redundant with confidential letter of concern common provision,~~
14 ~~12-20-404 (4).>~~

15
16 ~~**12-135-403. [Formerly 12-54-406] Cease-and-desist orders - procedure.**~~ (1)(a) If
17 it appears to the director, based upon credible evidence as presented in a written complaint,
18 that a person is acting in a manner that creates an imminent threat to the health and safety of
19 the public, or a person is acting or has acted without the required registration, the director
20 may issue an order to cease and desist such activity. The order shall set forth the statutes and
21 rules alleged to have been violated, the facts alleged to have constituted the violation, and
22 the requirement that all unlawful acts or unauthorized practices immediately cease.

23 (b) ~~Within ten days after service of the order to cease and desist pursuant to paragraph~~
24 ~~(a) of this subsection (1), the respondent may request a hearing on the question of whether~~
25 ~~the alleged acts or practices have occurred. Such hearing shall be conducted pursuant to~~
26 ~~sections 24-4-104 and 24-4-105, C.R.S.~~

27 (2) (a) ~~If it appears to the director, based upon credible evidence as presented in a~~
28 ~~written complaint, that a person has violated this article or rules promulgated under this~~
29 ~~article, then, in addition to any specific powers granted pursuant to this article, the director~~
30 ~~may issue to such person an order to show cause as to why the director should not issue a~~
31 ~~final order directing such person to cease and desist from such violations.~~

32 (b) ~~A person against whom an order to show cause has been issued pursuant to~~
33 ~~paragraph (a) of this subsection (2) shall be promptly notified by the director of the issuance~~
34 ~~of the order, along with a copy of the order, the factual and legal basis for the order, and the~~
35 ~~date set by the director for a hearing on the order. Such notice may be served by personal~~
36 ~~service, by first-class United States mail, postage prepaid, or as may be practicable upon any~~
37 ~~person against whom such order is issued. Personal service or mailing of an order or~~
38 ~~document pursuant to this subsection (2) shall constitute notice thereof to the person.~~

39 (c) (f) ~~The hearing on an order to show cause shall be commenced no sooner than ten~~
40 ~~and no later than forty-five calendar days after the date of transmission or service of the~~

1 notification by the director as provided in paragraph (b) of this subsection (2). The hearing
2 may be continued by agreement of all parties based upon the complexity of the matter,
3 number of parties to the matter, and legal issues presented in the matter, but in no event shall
4 the hearing commence later than sixty calendar days after the date of transmission or service
5 of the notification.

6 (H) ~~If a person against whom an order to show cause has been issued pursuant to~~
7 ~~paragraph (a) of this subsection (2) does not appear at the hearing, the director may present~~
8 ~~evidence that notification was properly sent or served upon such person pursuant to~~
9 ~~paragraph (b) of this subsection (2) and such other evidence related to the matter as the~~
10 ~~director deems appropriate. The director shall issue the order within ten days after the~~
11 ~~director's determination related to reasonable attempts to notify the respondent, and the order~~
12 ~~shall become final as to that person by operation of law. Such hearing shall be conducted~~
13 ~~pursuant to sections 24-4-104 and 24-4-105, C.R.S.~~

14 (HH) ~~If the director reasonably finds that the person against whom the order to show~~
15 ~~cause was issued is acting or has acted without the required registration or has engaged in~~
16 ~~acts or practices constituting violations of this article or rules promulgated under this article,~~
17 ~~a final cease-and-desist order may be issued, directing such person to cease and desist from~~
18 ~~further violations:~~

19 (IV) ~~The director shall provide notice, in the manner set forth in paragraph (b) of this~~
20 ~~subsection (2), of the final cease-and-desist order within ten calendar days after the hearing~~
21 ~~conducted pursuant to this paragraph (c) to each person against whom the final order has~~
22 ~~been issued. The final order shall be effective when issued and shall be a final order for~~
23 ~~purposes of judicial review.~~

24 (3) ~~If it appears to the director, based upon credible evidence presented to the~~
25 ~~director, that a person has engaged in an act or practice constituting a violation of this article,~~
26 ~~a rule promulgated pursuant to this article, an order issued pursuant to this article, or an act~~
27 ~~or practice constituting grounds for administrative sanction pursuant to this article, the~~
28 ~~director may enter into a stipulation with the person.~~

29 (4) ~~If a person fails to comply with a final cease-and-desist order or a stipulation, the~~
30 ~~director may request the attorney general or the district attorney for the judicial district in~~
31 ~~which the alleged violation exists to bring, and if so requested such attorney shall bring, suit~~
32 ~~for a temporary restraining order and for injunctive relief to prevent any further or continued~~
33 ~~violation of the final order.~~

34 (5) ~~A person aggrieved by the final cease-and-desist order may seek judicial review~~
35 ~~of the director's determination or of the director's final order.~~

36 THE DIRECTOR MAY ISSUE CEASE-AND-DESIST ORDERS UNDER THE CIRCUMSTANCES
37 AND IN ACCORDANCE WITH THE PROCEDURES SPECIFIED IN SECTION 12-20-405. <{**Redundant**
38 **with cease-and-desist orders common provision, 12-20-405. Recommend repealing and**
39 **adding cross-reference to common provision, as indicated.**>

40
41 **12-135-404. [Formerly 12-54-407] Civil penalty - fines. (1) On motion of the**

1 director, the court may impose a civil penalty of not more than one thousand dollars for a
2 violation of this article *135* or a rule promulgated under this article *135*. The penalty shall be
3 transmitted to the state treasurer and credited to the general fund. <{*Because the penalty in*
4 *the first sentence is imposed by a court, it is not an administrative fine. The second*
5 *sentence is redundant with disposition of fines common provision, 12-20-404 (6).*
6 *Recommend striking.*>

7 (2) In addition to any other penalty that may be imposed pursuant to this section, a
8 funeral establishment or crematory violating this article *135* or a rule promulgated pursuant
9 to this article *135* may be fined no less than one hundred dollars and no more than five
10 thousand dollars for each violation proven by the director. All fines collected pursuant to this
11 subsection (2) shall be transferred to the state treasurer, who shall credit such moneys to the
12 general fund. <{*The second sentence is redundant with disposition of fines common*
13 *provision, 12-20-404 (6). Recommend striking.*>

14
15 **12-135-405. [Formerly 12-54-408] Enforcement - injunctions.** (1) The director may
16 forward to a district attorney or a state or federal law enforcement agency any information
17 concerning possible violations of statute or rule under this article *135* committed by any
18 person or complaints filed against a funeral director, mortuary science practitioner,
19 cremationist, or embalmer.

20 (2) The director may request that an action be brought in the name of the people of
21 the state of Colorado by the attorney general or the district attorney of the district in which
22 the violation is alleged to have occurred to enjoin a person from engaging in or continuing
23 the violation or from doing any act that furthers the violation. In such an action, an order or
24 judgment may be entered awarding such preliminary or final injunction as is deemed proper
25 by the court SEEK INJUNCTIVE RELIEF IN ACCORDANCE WITH SECTION 12-20-406. The notice,
26 hearing, or duration of an injunction or restraining order shall be made in accordance with
27 the Colorado rules of civil procedure. <{*Some redundancy with injunctive relief common*
28 *provision, 12-20-406. Recommend amending as indicated.*>

29
30 **12-54-409. Deferment prohibited.** When a complaint or an investigation discloses
31 misconduct that, in the opinion of the director, warrants formal action, the complaint shall
32 not be resolved by a deferred settlement, action, judgment, or prosecution. <{*Redundant*
33 *with disciplinary action/no deferral common provision, 12-20-404 (2). Recommend*
34 *repealing.*>

35
36 **12-135-406. [Formerly 12-54-410] Repeal.** Sections ~~12-54-110, 12-54-111,~~
37 ~~12-54-303, and 12-54-304~~ 12-135-110, 12-135-111, 12-135-303, AND 12-135-304 and this
38 part 4 are repealed, effective July 1, 2024. Prior to such BEFORE ITS repeal, the regulation of

REDRAFT

10.5.18

Double underlining
denotes changes
from prior draft

- 1 persons registered to practice cremation and mortuary science shall be reviewed pursuant to
- 2 IS SCHEDULED FOR REVIEW IN ACCORDANCE WITH section 24-34-104. ~~C.R.S.~~