

APA-1

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control: 395
Department or Agency: Alabama Board of Funeral Service
Rule No.: 395-X-4-.07
Rule Title: Closure of Funeral Establishment
Intended Action: New

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? No

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? No

To what degree?: N/A

Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer

Charles M. Perine
Charles Perine

Date

Wednesday, August 21, 2024

REC'D & FILED
AUG 21, 2024
LEGISLATIVE SVC AGENCY

ALABAMA BOARD OF FUNERAL SERVICE

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Board of Funeral Service

RULE NO. & TITLE: 395-X-4-.07 Closure of Funeral Establishment

INTENDED ACTION: New

SUBSTANCE OF PROPOSED ACTION:

The Board seek to establish a Closing Procedure when a funeral establishment elects to voluntarily close the operations of a licensed funeral establishment. Also, the state statute requires that every establishment shall be operated under the full charge, control, and supervision of a managing funeral director and managing embalmer, therefore this proposed rule will establish the procedure when a managing funeral director or managing embalmer abruptly removes their license from an funeral establishment. This rule amendment protects the public's health, safety, and welfare by ensuring all dead human remains including cremated remains are properly handled, and all required paperwork is completed before a funeral establishment closes and to ensure that a licensed funeral director and/or embalmer is available to assist a family experiencing a lost.

TIME, PLACE AND MANNER OF PRESENTING VIEWS:

Written, verbal or electronic mail comments will be accepted by the Board until:
Time: 4:30 p.m., Friday, October 4, 2024
Place: 4276 Lomac Street, Montgomery, AL 36106
Email: Charles.perine@fsb.alabama.gov
Phone: 334-242-4049

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Friday, October 4, 2024

CONTACT PERSON AT AGENCY:

Charles M. Perine

Charles M. Perine

Charles Perine

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

Closure of Funeral Establishment.

1. A licensed funeral establishment may voluntarily close for operation by meeting the following requirements.
 - a. The establishment must declare its intent to cease operation on a form prescribed by the Board.
 - b. The establishment shall work with the Board to establish an effective date of closure.
 - c. Prior to the effective date of closure, the establishment shall:
 - i. file all death certificates with the Department of Health;
 - ii. complete all arrangements for remains in the establishment's custody and care, including disposal of all cremated remains, in accordance with Chapter 13 of Title 34 of the Code of Alabama of 1975;
 - iii. ensure that no remains are present or in the custody and care of the establishment;
 - iv. account for and transfer (if necessary) all preneed contracts;
 - v. take any other action necessary to protect consumers as determined and directed by the Board.
 - d. The establishment shall surrender the establishment license issued by the Board.
 - e. Upon approval of the closure by the Board, the establishment shall cease and desist from all operation related to any activity regulated by Title 34, Chapter 13 and by rule of the Board.
2. Because statute requires that every establishment shall be operated under the full charge, control, and supervision of a managing funeral director and managing embalmer, if either the managing funeral director and/or the managing embalmer of record for the establishment removes their license from the establishment or the position otherwise becomes vacant, the Board may designate the establishment as closed subject to the following procedures:
 - a. Within 72 hours of a vacancy in either or both of the establishment's licensed managing positions, the

establishment must provide the Board with completed managing affirmation letter(s) (in a form prescribed by the Board) naming a replacement for each vacancy.

- b. The establishment may temporarily continue operation during the 72-hour period only under the direction of a licensed funeral director and licensed embalmer who the establishment shall appoint as the "temporary managing funeral director" or "temporary managing embalmer," as appropriate.
 - i. The establishment may not operate until it has certified to the Board (on a form to be prescribed by the Board) that a temporary licensed manager corresponding to the appropriate vacancy has been appointed.
 - ii. A temporary licensed manager shall be responsible for the operations of the establishment corresponding to his or her respective area of practice to the same extent as a permanent licensed manager, including potential supervisory liability for violations of Chapter 13 of Title 34 of the Code of Alabama of 1975.
 - iii. A temporary licensed manager may simultaneously hold a position as a permanent licensed manager at another funeral establishment; provided, nothing in this subsection alters the statutory prohibition that an individual cannot serve as a permanent licensed manager for more than one funeral establishment.
 - c. The establishment shall cease and desist from all operation as a funeral establishment if the managing affirmation letter(s) prescribed by the Board is not received within 72 hours of a vacancy in either or both of the establishment's licensed managing positions.
3. The Board may serve a Notice of Closure listing the establishment license number and the effective date of closure to any establishment subject to closure pursuant to the foregoing provisions. As of the effective date of closure, the establishment must cease and desist from all operation related to any activity regulated by Chapter 13 of Title 34 of the Code of Alabama of 1975 or by rule of the Board.
 4. Upon a closure approved by the Board pursuant to this rule, the Board shall change the designation of the establishment's license from "active" to "closed."

5. An establishment that has been designated as closed may reopen by:
 - a. complying with all action required in any Corrective Action Notice issued by the Board in conjunction with the establishment's closure; and
 - b. receiving written approval from the Board either rescinding the Notice of Closure or approving an application for a new establishment license in accordance with Title 34, Chapter 13 and rule of the Board, as appropriate.

6. An establishment aggrieved by any action taken pursuant to this rule may request a public hearing before the board to appeal the action of the board. The request for a public hearing shall be submitted to the Board in writing within 14 calendar days after the action to be challenged was taken. Upon request, the Board shall schedule a hearing and provide the establishment with at least 20 days' notice of the public hearing by United States certified mail.

Author: Charles M. Perine

Statutory Authority: Code of Ala. 1975, 34-13-23, 34-13-26, 34-13-110, 34-13-112

History: New Rule: Published _____; effective _____.