

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Board of Funeral Service

RULE CITATION: 21 NCAC 34B .0408

**DEADLINE FOR RECEIPT: December 9, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Line 6-8, (a)(1): Please cite the Board's authority to issue letters of caution, etc.*

*Line 15, (a)(2): Replace "may" with "shall".*

*Line 17, (b): Define "newly".*

*Lines 17-19, (b): This sentence is confusing. Consider, if it fits the Board's intentions: "A person who has received his or her license within the past \_\_\_ months and who currently holds an active license shall receive credit CE credit for any CE hours earned after that licensee's mortuary science college graduation provided that the CE hours were earned within the preceding twelve months."*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee  
Commission Counsel

Date submitted to agency: November 23, 2022

1 21 NCAC 34B .0408 is amended as published in 37:04 NCR 340-342 as follows:

2  
3 **21 NCAC 34B .0408 CONTINUING EDUCATION PROGRAM**

4 (a) For licensees required to complete ~~CE~~ continuing education (“CE”) as a prerequisite to annual license renewal,  
5 the five hours of approved CE shall meet the following requirements:

- 6 (1) ~~Up to two hours may be in courses required by the Board. CE courses taken at the direction of the~~  
7 ~~Board as memorialized in a letter of caution, consent order, or final agency decision shall not be~~  
8 ~~credited toward CE hours needed for annual licensure renewal.~~ If the Board requires licensees to  
9 take a particular required course or courses, the Board shall notify licensees no later than October 1  
10 of the year preceding the calendar year in which the course(s) will be required.  
11 (2) ~~Licensees may take up to two hours of continuing education each year by computer based CE~~  
12 ~~approved by the Board as set forth in 21 NCAC 34B .0414.~~  
13 (3) ~~Licensees may not receive more than two hours of credit for continuing education courses in preneed~~  
14 ~~each year.~~  
15 (4)(2) Licensees may not receive credit toward completed CE hours for taking the same CE course within  
16 two years.

17 (b) A newly admitted active licensee may ~~include as credit hours,~~ submit to the Board for credit toward completed  
18 CE hours needed for annual licensure renewal which may be carried over to the next ~~succeeding~~ calendar year, any  
19 approved ~~continuing education~~ CE hours earned after that licensee's graduation from mortuary science college.

20  
21 *History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5);*  
22 *Eff. July 1, 2005;*  
23 *Amended Eff. January 1, 2009;*  
24 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19,*  
25 *~~2017.~~ 2017;*  
26 *Amended Eff. January 1, 2023.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Board of Funeral Service

RULE CITATION: 21 NCAC 34D .0202

**DEADLINE FOR RECEIPT: December 9, 2022**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Page 1, Lines 10-13, (b): Whereas G.S. 90-210.67 states, “No person may offer or sell preneed funeral contracts or offer to make or make any funded funeral prearrangements without first securing a license from the Board,” explain the Board’s authority to allow resident trainees to engage in preneed sales and marketing.*

*Page 1, Line 11: Should “and” be “or”? If not, add “are” after “and”.*

*Page 1, Line 14-20: The Board uses “and” frequently. Would a comma provide more clarity to the Board’s intention? For example, in (1) would a non-licensee/trainee be permitted to “show” but not “explain” written materials? What if the materials shown and explained were descriptive of funeral “services” but not “merchandise”?*

*Page 1, Line 31-35, (c): Please explain the necessity and authority for the Board to determine whether the sale of a prearrangement insurance policy requires a preneed license. Do the definitions of G.S. 90-210.60 not already settle this?*

*Page 2, Lines 1-3, (d)(1): Are there any time frames within which the application must be filed?*

*Page 2, Line 13, (d)(1)(F): What “proof” will satisfy the Board?*

*Page 2, Line 15, (d)(1)(G): Consider “...signature and attestation that...”*

*Page 2, Line 20-22, (d)(2): If a sales licensee is employed by multiple preneed licensee establishments pursuant to Subparagraph (e), it appears that one*

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*establishment can cause the sales licensee's license to be surrendered. Or does a sales licensee have one license for each establishment with which he or she is associated? This is unclear.*

*Page 2, Lines 20-22, and 31-32, (e): Explain the Board's authority to restrain a sales licensee's employment (in the context of preneed sales) to one preneed establishment without the consent of the sales licensee's employer?*

*Page 3, Lines 6-7, (f): Does the licensee need to present the card to a prospective purchaser or to a purchaser at the time of contract under Subparagraph (g)? Does the licensee need to surrender the card to the Board or the preneed establishment at any time?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee  
Commission Counsel

Date submitted to agency: November 23, 2022

1 21 NCAC 34D .0202 is amended as published in 37:04 NCR 340-342 as follows:

2  
3 **21 NCAC 34D .0202 PRENEED SALES LICENSE**

4 (a) ~~Subject to G.S. 90-210.69(e), holding a~~ Individuals who hold either an active funeral director's license, issued by  
5 the Board, or a license or an active funeral service license, issued by the Board, is the qualification to be license issued  
6 by the Board and who have taken three or more hours of continuing education on preneed statutes and rules taught by  
7 Board staff within the preceding three calendar years are eligible for initial licensure as a preneed sales license. license  
8 upon application by a funeral establishment holding an active preneed establishment permit, as set forth in Paragraph  
9 (d) of this Rule.

10 (b) ~~The preneed sales licensee may engage, under the preneed sales license, Only individuals who hold an active~~  
11 preneed sales license issued by the Board and resident trainees in funeral service or funeral directing registered with  
12 the Board pursuant to 21 NCAC 34B .0103(b) are permitted to engage in the following preneed funeral planning  
13 activities: activities, pursuant to the definition of "preneed funeral planning" in G.S. 90-210.60(8):

- 14 (1) show and explain written materials, including price lists and photographs, descriptive of the funeral  
15 services and merchandise and the preneed funeral plan or contract being offered;
- 16 (2) explain the various types of funeral ceremonies and services and the qualities and characteristics of  
17 various kinds of funeral merchandise;
- 18 (3) sell, on a preneed basis, funeral services and merchandise;
- 19 (4) record, on any form or otherwise, specific items of funeral services and merchandise selected on a  
20 preneed basis;
- 21 (5) make funeral arrangements on a preneed basis; and
- 22 (6) sign preneed contracts; provided, however, that the resident trainee and his or her licensed  
23 supervisor comply with 21 NCAC 34B .0103(e) when doing so. contracts. No preneed funeral  
24 planning activities shall be engaged in by anyone other than a preneed sales licensee or a registered  
25 resident trainee in funeral service or funeral directing pursuant to 21 NCAC 34B .0103(b); provided,  
26 however, no preneed sales license is required solely for the sale of an insurance policy, and in  
27 connection with such a sale, the salesperson shall not be deemed to have engaged in preneed funeral  
28 planning if, for the sole purpose of permitting a prospective purchaser to make an informed decision  
29 as to the amount of insurance desired, the salesperson shows only price lists of funeral services and  
30 merchandise.

31 (c) No preneed sales license is required for the sale of an insurance policy for which no funeral establishment or its  
32 representative is listed as the beneficiary or assignee of said policy. In connection with such a sale, the salesperson  
33 shall not be deemed to have engaged in preneed funeral planning if the salesperson shows only price lists of funeral  
34 services and merchandise to permit a prospective purchaser to make an informed decision as to the amount of  
35 insurance desired.

36 (d) An applicant shall apply for, renew, or surrender a preneed sales license in accordance with the following  
37 provisions:

1           (1)     A funeral establishment holding an active preneed establishment permit shall apply for, or renew, a  
2                     preneed sales license by submitting the following to the Board on behalf of the applicant for a  
3                     preneed sales license:

4                     (A)     the applicant's name, address, email address, and telephone number;

5                     (B)     the applicant's funeral director's or funeral service license number;

6                     (C)     the name, address, and preneed establishment permit number of the preneed funeral  
7                             establishment licensee or licensees on whose behalf the applicant will sell preneed funeral  
8                             contracts;

9                     (D)     the applicant's employment or agency relationship with the preneed establishment licensee  
10                            or licensees;

11                    (E)     the initial or renewal application fee required by 21 NCAC 34A .0201(c) for each preneed  
12                            sales licensee;

13                    (F)     proof that the applicant has taken the continuing education course required by Paragraph  
14                            (a) of this Rule; and

15                    (G)     the applicant's signature to attest that he or she has read and will comply with the statutes  
16                            and rules governing the practice of preneed funeral service.

17           (2)     Either the preneed sales licensee or the preneed funeral establishment on whose behalf the preneed  
18                     sales licensee is engaged in preneed funeral planning activities may surrender a preneed sales license  
19                     by submitting notification of such surrender in writing to the Board.

20     (e) If a preneed sales licensee proposes to engage in preneed funeral planning activities on behalf of multiple preneed  
21     funeral establishment licensees that are not wholly owned by or affiliated with common ownership, the preneed sales  
22     licensee shall submit the following to the Board:

23                    (1)     the date on which the preneed sales licensee will begin engaging in preneed funeral planning  
24                            activities for multiple preneed funeral establishment licensees;

25                    (2)     the date on which the preneed sales licensee will stop engaging in preneed funeral planning activities  
26                            for multiple preneed funeral establishment licensees, if known;

27                    (3)     the name, license number, and signature of the preneed sales licensee;

28                    (4)     the name and signature of the licensed manager of each preneed funeral establishment licensee for  
29                            whom the preneed sales licensee will engage in preneed funeral planning activities.

30                    (5)     an attestation from each of the individuals identified in SubParagraphs (3)-(6) of this Paragraph that:

31                            (A)     he or she consents to the preneed sales licensee engaging in preneed funeral planning  
32                                    activities on behalf of the identified preneed funeral establishment licensees; and

33                            (B)     the preneed sales licensee and the preneed funeral establishment licensee on whose behalf  
34                                    the preneed funeral planning activities are to be conducted shall comply with the statutes  
35                                    and rules governing preneed funeral planning activities.

36     ~~(e) A licensed funeral director or funeral service licensee wishing to apply for a preneed sales license shall submit to~~  
37     ~~the Board the applicant's name, address, telephone number, funeral director's or funeral service license number, name~~

1 ~~and address of the preneed funeral establishment licensee or licensees on whose behalf the applicant will sell preneed~~  
2 ~~funeral contracts, and the applicant's employment or agency relationship with the licensee or licensees. If the applicant~~  
3 ~~proposes to sell on behalf of more than one preneed funeral establishment licensee, the applicant shall disclose~~  
4 ~~information to satisfy the requirement of G.S. 90-210.67(a) that the preneed funeral establishment licensees be related~~  
5 ~~by ownership or contract.~~

6 ~~(d)(f)~~ The Board shall issue to each preneed sales licensee a pocket card as certification of the preneed sales license.  
7 The preneed sales licensee shall carry the card while engaging in preneed funeral planning. ~~Upon making application~~  
8 ~~for a license the applicant shall indicate the names of the preneed funeral establishment licensees on whose behalf the~~  
9 ~~preneed sales licensee is authorized to sell preneed funeral contracts. The applicant shall pay an application fee and~~  
10 ~~an annual renewal fee determined, respectively, by multiplying the application fee and renewal fee in 21 NCAC 34A~~  
11 ~~.0201(e) times the number of preneed funeral establishment licensees on whose behalf the preneed sales licensee is~~  
12 ~~authorized to sell. When there is any change in the list of establishments on whose behalf the preneed sales licensee~~  
13 ~~is authorized to sell, the preneed sales licensee shall, within 10 days, file an amended list with the Board and shall pay~~  
14 ~~the application fee for each new funeral establishment licensee named on the list, regardless of whether one or more~~  
15 ~~names have been deleted. The total preneed sales license application fee and total renewal fee paid pursuant to this~~  
16 ~~Paragraph shall not exceed the maximums, respectively, set by statute.~~

17 ~~(e)(g)~~ The preneed sales licensee shall sign and affix his or her preneed sales license number to each preneed funeral  
18 contract, which he or she sells, in the presence of the purchaser of the contract at the time of sale.

19  
20 *History Note: Authority G.S. 90-210.25(a)(4); 90-210.60(8); 90-210.67(a),(c); ~~90-210.69(a)~~; 90-210.69(a), (c);*  
21 *Eff. July 1, 1993;*  
22 *Amended Eff. January 1, 1996; June 1, 1994;*  
23 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19,*  
24 *~~2017.~~ 2017;*  
25 *Amended Eff. January 1, 2023.*