

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Board of Funeral Service

RULE CITATION: 21 NCAC 34A .0201

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
  - Lack of statutory authority
  - X Unclear or ambiguous
  - Unnecessary
  - X Failure to comply with the APA
  - Extend the period of review

COMMENT:

*Staff recommends objection to this Rule for failure to comply with the APA, as it appears that the agency proposed to increase the fees in Subparagraphs (c) relating to preneed sales license applications and annual renewal post-publication in the NC Register. Staff is also concerned that the Notice of Text was not sufficient to inform the regulated public that other existing fees in the Rule were being increased. Further, based upon the different texts of the Rule presented for RRC review, it is unclear exactly what fees the agency proposes to charge.*

*This Rule is a readoption; the agency was required to readopt by September 30, 2019 and it did so. As part of the readoption process, the agency published this Rule in the April 15, 2019 NC Register. At that time, the agency stated in its Notice of Text (attached on Page 7 of this rollup):*

*It should be noted that, although substantive changes are proposed to 21 NCAC 34A .0201 – Fees AND OTHER PAYMENTS, these changes do not alter the existing fee amounts, but rather simply update existing fee structures to reflect the licensing of hydrolysis facilities and operators, as authorized by House Bill 529, codified as G.S. 90-210.136.*

*The Rule as published in the Register did not show any changes to the fees charged in the Rule. It simply added a reference to Hydrolysis in Paragraph (b) and that the fees were nonrefundable in Paragraph (e). However, when staff reviewed this Rule, staff realized that the agency had made changes to the fees without showing them as being changed in the Register publication. For example, as currently codified, the fee for an application for an establishment permit is \$250. (See*

Amanda J. Reeder  
Commission Counsel

*the current rule on Page 3 of this rollup). However, as published in the Register, the agency stated that it was \$350 and did not show this increase as a change. When the Rule was filed for RRC review, the electronic version of the Rule showed a change from \$250 to \$350. The physical version of the Rule did not show a change, and stated the fee is \$250. (Copies of the physical and electronic versions of the Rule as submitted for RRC review are attached to Pages 9 and 12 of this rollup.) Because different versions of the same rule were submitted, it is unclear what the agency is proposing to charge, and therefore, staff believes this Rule is ambiguous as submitted.*

*Staff has concerns that the Notice of Text's statement that the fees were not being changed in this readoption did not give the regulated public sufficient notice that the fees were possibly being increased, depending upon the version of the Rule submitted by the Board it is intending to have become effective.*

*In addition, in the electronic copy of the Rule filed with RRC for review, after publication, the agency increased the fees for the application and annual renewal of preneed sales licenses from \$20 to \$30 each. Staff notes that pursuant to G.S. 90-210.67(c), the fee can be up to \$50 each, so staff is not concerned regarding the statutory authority for the amount. However, staff believes that increasing these fees by \$10 post-publication is a substantial change pursuant to G.S. 150B-21.2(h).*

*Please note, staff does not dispute that the agency has statutory authority to increase the fees to the levels proposed in the different versions of the Rule. Staff's concerns regarding the fee amounts are solely related to compliance with the APA and clarity and recommends objection based upon those grounds.*

Amanda J. Reeder  
Commission Counsel

SECTION .0200 - FEES AND OTHER PAYMENTS

21 NCAC 34A .0201 FEES AND OTHER PAYMENTS

(a) Fees for funeral service shall be as follows:

Establishment permit	
Application	\$250.00
Annual renewal	\$200.00
Late renewal fee	\$100.00
Establishment and embalming facility reinspection fee	\$100.00
Courtesy card	
Application	\$ 75.00
Annual renewal	\$ 50.00
Out-of-state licensee	
Application	\$200.00
Embalmer, funeral director, funeral service	
Application, North Carolina resident	\$150.00
Application, non-resident	\$200.00
Annual renewal	
Embalmer	\$ 75.00
Funeral Director	\$ 75.00
Total fee, embalmer and funeral director, when both are held by same person	\$ 100.00
Funeral service	\$ 100.00
Inactive status	\$ 30.00
Reinstatement fee	\$ 50.00
Resident trainee permit	
Application	\$ 50.00
Voluntary change in supervisor	\$ 50.00
Annual renewal	\$ 35.00
Late renewal	\$ 25.00
Duplicate License certificate	\$ 25.00
Chapel registration	
Application	\$150.00
Annual renewal	\$100.00
Late renewal	\$ 75.00

(b) Fees for crematories shall be as follows:

License	
Application	\$400.00
Annual renewal	\$150.00
Late renewal fee	\$ 75.00
Crematory reinspection fee	\$100.00
Per-cremation fee	\$ 10.00
Late filing or payment fee for each cremation	\$ 10.00
Late filing fee for cremation report, per month	\$ 75.00
Crematory Manager Permit	
Application	\$150.00
Annual renewal	\$ 40.00

(c) Fees for preneed funeral contract regulation shall be as follows:

Preneed funeral establishment license	
Application	\$150.00
Annual renewal	\$150.00
Late renewal fee	\$100.00
Reinspection fee	\$100.00
Preneed sales license	
Application	\$ 20.00
Annual renewal	\$ 20.00
Late renewal fee	\$ 25.00

1	Preneed contract filings	
2	Filing fee for each contract	\$ 20.00
3	Late filing or payment fee for each contract	\$ 25.00
4	Late filing fee for each certificate of performance	\$ 25.00
5	Late filing fee for annual report	\$150.00
6	(d) Fees for Transportation Permits	
7	Application	\$125.00
8	Annual renewal	\$ 75.00
9	Late fee	\$ 50.00

10

11 *History Note: Authority G.S. 90-210.23(a); 90-210.25(c); 90-210.28; 90-210.67(b),(c),(d),(d1); 90-210.68(a);*  
12 *Eff. September 1, 1979;*  
13 *Amended Eff. January 1, 1991; July 1, 1988; January 1, 1988; October 1, 1983;*  
14 *Recodified from 21 NCAC 34 .0123 Eff. February 7, 1991;*  
15 *Amended Eff. December 1, 1993; August 2, 1993; May 1, 1993, July 1, 1991;*  
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18  
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# ***NORTH CAROLINA REGISTER***

**VOLUME 33 • ISSUE 20 • Pages 1986 – 2081**

**April 15, 2019**

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**PUBLISHED BY**

*The Office of Administrative Hearings  
Rules Division  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
Telephone (919) 431-3000  
Fax (919) 431-3104*

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Certification of Nutrition Specialists' website, which is hereby incorporated by reference including subsequent amendments or editions of reference material. Copies of this standard may be obtained at no charge from the BCNS's website at: <https://nutritionspecialists.org/cns-tools/recertification>; or

- (4) Verification of current certification as a Diplomate, American Clinical Board of Nutrition by the ACBN, and verification of compliance with ACBN's continuing education requirements. The continuing education standards required to maintain certification are listed on the American Clinical Board of Nutrition's website, which is hereby incorporated by reference including subsequent amendments or editions of reference material. Copies of this standard may be obtained at no charge from the ACBN's website at: <https://www.acbn.org/policiesprocedures.pdf>.

(h) ~~The Board shall furnish a A renewal license shall be furnished~~ to each licensee who meets all renewal requirements by the expiration date.

(i) The Board shall renew a license upon the payment of a late fee within 60 days of the expiration ~~date of March 31. date.~~ If the license has been expired for 60 days or less, the license may be renewed by ~~returning submitting the online license renewal form form, with all appropriate the renewal and late fees fee, and verification of current certification as a Registered Dietitian Nutritionist, Certified Nutrition Specialist, Diplomate, American Clinical Board of Nutrition, or, if following the requirements of Subparagraph (g)(2) of this Rule, continuing education documentation and documentation~~ to the Board, postmarked on or before the end of the 60-day grace period.

Authority G.S. 90-356; 90-362; 90-363.

**SECTION .0300 - DIETETIC/NUTRITION STUDENTS OR TRAINEES**

**21 NCAC 17.0303 SUPERVISION**

~~(a) A planned, continuous program in clinical practice pursuant to G.S. 90-357(3)b.2. shall designate a licensed dietitian/nutritionist who shall supervise a student or trainee; and~~

- (1) ~~shall meet the qualifications of the current standards of education as referenced in the most current edition of the "Eligibility Requirements and Accreditation Standards for Dietetic Internship Programs (DI)" which is hereby incorporated by reference including any subsequent amendments and editions of the referenced material. Copies of this manual are available at no charge through the ADA's website at: <http://www.eatright.org/CADE/content.aspx?id=57>; and~~
- (2) ~~shall meet his/her employment qualifications of the sponsoring institution, if any.~~

~~(b) In accordance with the current standards of education referenced in this Rule, a Program Director shall:~~

- (1) ~~provide student/trainee advisement, evaluation, counseling and supervision;~~
- (2) ~~provide academic or supervised practice program assessment, planning, implementation and evaluation;~~
- (3) ~~inform student(s)/trainee(s) of laws, regulations and standards affecting the practice of dietetics/nutrition, including the Dietetics/Nutrition Practice Act and its Rules; and~~
- (4) ~~advise student(s)/trainee(s) on meeting the requirements to be licensed to practice dietetics/nutrition.~~

For purposes of G.S. 90-368(2), "direct supervision" means the supervising practitioner:

- (1) discusses and recommends, with the student or trainee, nutrition care services undertaken by the student or trainee, which are appropriate to the level of nutrition care;
- (2) is available for consultation on nutrition care activities being performed by the student or trainee, either through on-site or through electronic communication;
- (3) shall be available to render assistance when requested by the student or trainee or the patient or client, or shall have arranged for another practitioner to be available in the absence of the supervising practitioner;
- (4) personally observes, evaluates, and approves the acts or functions of the student or trainee supervised; and
- (5) shall maintain responsibility for the nutrition care activities performed by the student or trainee. For patients or clients receiving medical nutrition therapy in NC, the supervising practitioner shall be licensed in the State to provide the medical nutrition therapy he or she is supervising. For patients or clients outside of NC, the supervising practitioner shall be lawfully allowed to provide the nutrition care activities in the state where the patients or clients are located.

Authority G.S. 90-356(2); 90-357; 90-357.5; 90-368(2).

\*\*\*\*\*

**CHAPTER 34 – BOARD OF FUNERAL SERVICE**

*Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Board of Funeral Service intends to readopt with substantive changes the rules cited as 21 NCAC 34A .0201; 34B .0310; 34C .0305; 34D. 0105, .0203 and .0303.*

**Link to agency website pursuant to G.S. 150B-19.1(c): [www.ncbfs.org](http://www.ncbfs.org)**

**Proposed Effective Date:** *September 1, 2019*

**Comments may be submitted to:** *Catherine E. Lee, 1033 Wade Avenue, Suite 108, Raleigh, NC 27605, email clee@ncbfs.org*

**Public Hearing:**

**Date:** *May 8, 2019*

**Time:** *9:30 a.m.*

**Location:** *1033 Wade Avenue, Suite 108, Raleigh, NC 27605*

**Comment period ends:** *June 14, 2019*

**Reason for Proposed Action:** *Pursuant to G.S. 150B-21.3A(c)(2)g., all six rules proposed for re-adoption were determined to be necessary with substantive public interest as part of the periodic review of this agency's rules and, therefore, are subject to re-adoption. Pursuant to G.S. 150B-21.3A(d)(2), these rules are required to be re-adopted by the North Carolina Board of Funeral Service (the "Board") no later than September 30, 2019.*

*The substantive changes being proposed, among other things, reflect recent legislative changes as enacted by the passage of House Bill 529, "An Act Amending the Laws Pertaining to the Practice of Funeral Service" (S.L. 2018-78). In addition, the proposed changes reflect evolving technology and administrative practices of the Board staff to improve the efficiency with which the Board's regulations are administered.*

*It should be noted that, although substantive changes are proposed to 21 NCAC 34A .0201 – Fees AND OTHER PAYMENTS, these changes do not alter the existing fee amounts, but rather simply update existing fee structures to reflect the licensing of hydrolysis facilities and operators, as authorized by House Bill 529, codified as G.S. 90-210.136.*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- State funds affected
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required

**SUBCHAPTER 34A - BOARD FUNCTIONS**

**SECTION .0200 - FEES AND OTHER PAYMENTS**

**21 NCAC 34A .0201 FEES AND OTHER PAYMENTS**

(a) Fees for funeral service shall be as follows:

		Fee currently in rule
Establishment permit		
Application	\$350.00	\$250.00
Annual renewal	\$250.00	\$200.00
Late renewal fee	\$150.00	\$100.00
Establishment and embalming facility reinspection fee	\$100.00	
Courtesy card		
Application	\$75.00	
Annual renewal	\$50.00	
Out-of-state licensee		
Application	\$200.00	
Embalmer, funeral director, funeral service		
Application, North Carolina resident	\$150.00	
Application, non-resident	\$200.00	
Annual renewal		
Embalmer	\$75.00	
Funeral Director	\$75.00	
Total fee, embalmer and funeral director, when both are held by same person	\$100.00	
Funeral service	\$100.00	
Inactive status	\$30.00	
Reinstatement fee	\$50.00	
Resident trainee permit		
Application	\$50.00	
Voluntary change in supervisor	\$50.00	

**PROPOSED RULES**

Annual renewal	\$35.00	
Late renewal	\$25.00	
Duplicate License certificate	\$25.00	
Chapel registration		
Application	\$150.00	
Annual renewal	\$100.00	
Late renewal	\$75.00	
(b) Fees for <del>crematories</del> <u>crematory and hydrolysis licensees</u> shall be as follows:		
License		
Application	\$400.00	
Annual renewal	\$150.00	
Late renewal fee	\$75.00	
Crematory <u>or hydrolysis</u> reinspection fee	\$100.00	
Per-cremation <u>or per hydrolysis</u> fee	\$10.00	
Late filing or payment fee for each cremation <u>or hydrolysis</u>	\$10.00	
Late filing fee for cremation or hydrolysis report, per month	\$75.00	
Crematory <u>or Hydrolysis</u> Manager Permit		
Application	\$150.00	
Annual renewal	\$40.00	
(c) Fees for preneed funeral contract regulation shall be as follows:		
Preneed funeral establishment license		
Application	\$350.00	\$150.00
Annual renewal	\$250.00	\$150.00
Late renewal fee	\$100.00	
Reinspection fee	\$100.00	
Preneed sales license		
Application	\$20.00	
Annual renewal	\$20.00	
Late renewal fee	\$25.00	
Preneed contract filings		
Filing fee for each contract	\$20.00	
Late filing or payment fee for each contract	\$25.00	
Late filing fee for each certificate of performance	\$25.00	
Late filing fee for annual report	\$150.00	
(d) Fees for Transportation Permits <u>shall be as follows:</u>		
Application	\$125.00	
Annual renewal	\$75.00	
Late fee	\$50.00	
(e) <u>All fees remitted to the Board are non-refundable.</u>		

Authority G.S. 90-210.23(a); 90-210.25(c); 90-210.28; 90-210.67(b),(c),(d),(d1); 90-210.68(a); 90-210.134(a); 90-210.136.

**SUBCHAPTER 34B - FUNERAL SERVICE**

**SECTION .0300 - LICENSING**

**21 NCAC 34B .0310 PRACTICE OF FUNERAL SERVICE OR FUNERAL DIRECTING NOT AS AN OWNER, EMPLOYEE OR AGENT OF A LICENSED FUNERAL ESTABLISHMENT UNAFFILIATED PRACTICE PERMIT**

(a) ~~A funeral director or funeral service licensee registered to practice under G.S. 90-210.25(a2) shall not use its business office required by G.S. 90-210.25(a2)(2)a. to conduct the practice of funeral service or funeral directing. A funeral director or funeral service licensee shall not hold out to the public that its business office is a funeral establishment and shall not use a business name that misleads the public to believe that its business office is a funeral establishment or operates or maintains a facility that is a~~

~~funeral establishment.~~ Applications for an unaffiliated practice permit, pursuant to G.S. 90-210.25(a2), shall be made on forms provided by the Board, including the following information and documentation:

- (1) the full name and the applicant's Board-issued funeral directing or funeral service license number;
- (2) the applicant's physical address and, if different, mailing address;
- (3) the applicant's telephone number and facsimile number;
- (4) the name of the individual or entity that owns the unaffiliated practice;
- (5) the ownership percentages of each individual owner, partner, limited liability company member, or corporate officer;

21 NCAC 34A .0201 is readopted as published in 33:20 NCR 2056 follows:

**SECTION .0200 - FEES AND OTHER PAYMENTS**

**21 NCAC 34A .0201 FEES AND OTHER PAYMENTS**

(a) Fees for funeral service shall be as follows:

Establishment permit		
Application		\$250.00
Annual renewal		\$200.00
Late renewal fee		\$100.00
Establishment and embalming facility reinspection fee		\$100.00
Courtesy card		
Application		\$ 75.00
Annual renewal		\$ 50.00
Out-of-state licensee		
Application		\$200.00
Embalmer, funeral director, funeral service		
Application, North Carolina resident		\$150.00
Application, non-resident		\$200.00
Annual renewal		
Embalmer		\$ 75.00
Funeral Director		\$ 75.00
Total fee, embalmer and funeral director, when both are held by same person		\$ 100.00
Funeral service		\$ 100.00
Inactive status		\$ 30.00
Reinstatement fee		\$ 50.00
Resident trainee permit		
Application		\$ 50.00
Voluntary change in supervisor		\$ 50.00
Annual renewal		\$ 35.00
Late renewal		\$ 25.00
Duplicate License certificate		\$ 25.00
Chapel registration		
Application		\$150.00
Annual renewal		\$100.00
Late renewal		\$ 75.00

(b) Fees for ~~crematories~~ crematory and hydrolysis licensees shall be as follows:

1	License	
2	Application	\$400.00
3	Annual renewal	\$150.00
4	Late renewal fee	\$ 75.00
5	Crematory <u>or hydrolysis</u> reinspection fee	\$100.00
6	Per-cremation <u>or per hydrolysis</u> fee	\$ 10.00
7	Late filing or payment fee for each cremation <u>or hydrolysis</u>	\$ 10.00
8	Late filing fee for cremation <u>or hydrolysis</u> report report, per month	\$ 75.00
9	Crematory <u>or Hydrolysis</u> Manager Permit	
10	Application	\$150.00
11	Annual renewal	\$ 40.00
12	(c) Fees for preneed funeral contract regulation shall be as follows:	
13	Preneed funeral establishment license	
14	Application	\$350.00
15	Annual renewal	\$250.00
16	Late renewal fee	\$100.00
17	Reinspection fee	\$100.00
18	Preneed sales license	
19	Application	\$ 20.00
20	Annual renewal	\$ 20.00
21	Late renewal fee	\$ 25.00
22	Preneed contract filings	
23	Filing fee for each contract	\$ 20.00
24	Late filing or payment fee for each contract	\$ 25.00
25	Late filing fee for each certificate of performance	\$ 25.00
26	Late filing fee for annual report	\$150.00
27	(d) Fees for Transportation Permits <u>shall be as follows:</u>	
28	Application	\$125.00
29	Annual renewal	\$ 75.00
30	Late fee	\$ 50.00

31 (e) All fees remitted to the Board are non-refundable.

32

33 *History Note: Authority G.S. 90-210.23(a); 90-210.25(c); 90-210.28; 90-210.67(b),(c),(d),(d1); 90-210.68(a); 90-*  
34 *210.28; 90-210.134(a); 90-210.136;*  
35 *Eff. September 1, 1979;*  
36 *Amended Eff. January 1, 1991; July 1, 1988; January 1, 1988; October 1, 1983;*  
37 *Recodified from 21 NCAC 34 .0123 Eff. February 7, 1991;*

1                    *Amended Eff. December 1, 1993; August 2, 1993; May 1, 1993, July 1, 1991;*  
2                    *Temporary Amendment Eff. October 1, 1997;*  
3                    *Amended Eff. August 20, 2014; March 1, 2004; August 1, 1998;*  
4                    *Readopted Eff. November 1, 2019.*

1 21 NCAC 34A .0201 is readopted as published in 33:20 NCR2056 as follows:

2

3

**SECTION .0200 - FEES AND OTHER PAYMENTS**

4

**21 NCAC 34A .0201 FEES AND OTHER PAYMENTS**

6 (a) Fees for funeral service shall be as follows:

7

Establishment permit

8

Application

~~\$250.00~~350.00

9

Annual renewal

~~\$200.00~~250.00

10

Late renewal fee

~~\$100.00~~150.00

11

Establishment and embalming facility reinspection fee

\$100.00

12

Courtesy card

13

Application

\$ 75.00

14

Annual renewal

\$ 50.00

15

Out-of-state licensee

16

Application

\$200.00

17

Embalmer, funeral director, funeral service

18

Application, North Carolina resident

\$150.00

19

Application, non-resident

\$200.00

20

Annual renewal

21

Embalmer

\$ 75.00

22

Funeral Director

\$ 75.00

23

Total fee, embalmer and funeral director, when both are held by same person

\$ 100.00

24

Funeral service

\$ 100.00

25

Inactive status

\$ 30.00

26

Reinstatement fee

\$ 50.00

27

Resident trainee permit

28

Application

\$ 50.00

29

Voluntary change in supervisor

\$ 50.00

30

Annual renewal

\$ 35.00

31

Late renewal

\$ 25.00

32

Duplicate License certificate

\$ 25.00

33

Chapel registration

34

Application

\$150.00

35

Annual renewal

\$100.00

36

Late renewal

\$ 75.00

37

(b) Fees for crematories shall be as follows:

1	License		
2	Application	\$400.00	
3	Annual renewal	\$150.00	
4	Late renewal fee	\$ 75.00	
5	Crematory reinspection fee	\$100.00	
6	Per-cremation fee	\$ 10.00	
7	Late filing or payment fee for each cremation	\$ 10.00	
8	Late filing fee for cremation report, per month	\$ 75.00	
9	Crematory Manager Permit		
10	Application	\$150.00	
11	Annual renewal	\$ 40.00	
12	(c) Fees for preneed funeral contract regulation shall be as follows:		
13	Preneed funeral establishment license		
14	Application	<del>\$150.00</del> 350.00	
15	Annual renewal	<del>\$150.00</del> 250.00	
16	Late renewal fee	\$100.00	
17	Reinspection fee	\$100.00	
18	Preneed sales license		Increased
19	Application	\$ <del>20.00</del> 30.00	after Publication
20	Annual renewal	\$ <del>20.00</del> 30.00	
21	Late renewal fee	\$ 25.00	
22	Preneed contract filings		
23	Filing fee for each contract	\$ 20.00	
24	Late filing or payment fee for each contract	\$ 25.00	
25	Late filing fee for each certificate of performance	\$ 25.00	
26	Late filing fee for annual report	\$150.00	
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