§ 3428. Funeral directing; registration of licenses; fees. 1. (a) Every person who, within the state, practices as a funeral director, undertaker or embalmer and every person, partnership or corporation who or which owns or operates within the state a funeral firm as herein defined shall biennially apply to the department for an appropriate certificate of registration and report, in a statement subscribed and affirmed as true under the penalties of perjury, any facts requested by the department.

(b) Such report by a corporation also shall set forth the name, residence address and title of each of its officers and directors and the name and residence address of each stockholder and other person, firm and corporation having a ten per centum or greater proprietary, beneficial, equitable or credit interest therein.

(c) Every such report also shall contain a statement as to whether the applicant and, if a partnership, any partner and, if a corporation, any of the officers, directors, stockholders or other persons, firms or corporations required to be listed therein had been convicted of a crime in the two year period immediately preceding the date of such application. Such statement shall identify such crime and the jurisdiction involved and the disposition of the charge.

(d) Every such report shall contain a statement as to whether the applicant and, if a partnership, any partner and, if a corporation, any of the officers, directors, stockholders or other persons, firms or corporations required to be listed therein, or any funeral firm with which such applicant, partner, officer, director, stockholder, person, firm or corporation has been affiliated, has been found in violation of the provisions of this article or any statute, rule or regulation relating to funeral directing. Such statement shall identify such statute, rule or regulation and the disposition of any proceeding thereon.

(e) In addition to such report, every person, partnership or corporation herein required to apply for a certificate shall without delay inform the department by written statement of his conviction, or of the conviction of any member of the partnership, or, if a corporation, of the conviction of any of its officers, directors, stockholders or other persons, firms or corporations required to be reported as provided by paragraph (b) of this subdivision.

(f) In addition to any report required pursuant to this section, every person, partnership or corporation herein required to apply for a certificate of registration pursuant to this article shall provide notice to the department of the proposed: (i) sale or transfer of all or substantially all of the assets of a funeral firm, (ii) the sale or transfer of a controlling interest of such funeral firm, or (iii) the termination of the business of such funeral firm where there is no transferee of assets or stock. For purposes of this section, the term "controlling interest" shall mean a fifty-one percent interest in a partnership or fifty-one percent of the issued and outstanding shares of stock of a corporation. In the case of subparagraphs (i) and (ii) of this paragraph, such notice to the department shall identify the transferee or transferees of the assets or controlling interest and contain a listing of the names and addresses of the persons who deposited moneys with the funeral firm pursuant to section four hundred fifty-three of the general business law, and the amount to be transferred to the transferee or transferees. In the case of the termination, cessation of operation or discontinuation of the firm where there is no transferee, such notice shall contain a listing of the names and addresses of the persons who deposited funds with the funeral firm, the amount held in trust by such funeral firm and the proposed disposition of the moneys so held by such funeral firm. All such notices shall be provided to the department not less than ten days after the sale or transfer of such funeral firm or not less than thirty days prior to the termination, cessation of operation or discontinuation of the business of such funeral firm.

2. (a) An undertaker or embalmer shall pay to the department a biennial registration fee of sixty-two dollars and fifty cents.

(b) A funeral director shall pay a biennial registration fee of one hundred twenty-five dollars; however, initial registration shall not require such fee.

(c) Only a registered funeral firm may operate, or engage in the business and practice of funeral directing. Said business and practice must be conducted from an approved funeral establishment. In the event a funeral firm conducts its business from more than one funeral establishment, the firm must be registered from each such establishment.

In the event more than one firm conducts its business from the same funeral establishment, each firm must be registered from the establishment and have an individual manager representing that firm at that establishment. The initial registration fee for each required registration is four hundred dollars for the period ending with the then current biennial registration period, and the biennial registration fee thereafter is three hundred dollars.

(d) The owner of a funeral firm shall pay a registration fee of one hundred dollars for the amendment of a certificate of registration to indicate a change of location, change of manager or change in firm name thereof.

(e) For failure to register, an additional fee of ten dollars for each delay of thirty days or part thereof beyond the first day of the biennial registration period shall be added to the regular fee. The commissioner may, for good cause shown, waive or compromise all or any part of this additional fee.

3. (a) Upon verification of the statements thus reported and the receipt of the requisite fee, the commissioner shall issue a certificate of registration; except that, in those instances where a conviction shall have been reported as herein required, or upon other proof thereof, and in the case of a funeral firm where an applicant or, if a partnership, any partner or, if a corporation, any of its officers, directors, stockholders or other persons, firms or corporation required to be reported as provided by paragraph (b) of subdivision one of this section, or any funeral firm with which such applicant, partner, officer, director, stockholder, person, firm or corporation has been affiliated, has committed repeated violations of the provisions of this article or any statute, rule or regulation relating to funeral directing, or has committed a significant violation, as defined by the commissioner pursuant to rule and regulation, of the provisions of this article or any statute, rule or regulation relating to funeral directing, the commissioner may deny an application for a certificate.

(b) The commissioner shall afford the applicant an opportunity to be heard at a hearing, on due notice, conducted in accordance with the provisions of this chapter, prior to the issuance of any order or determination denying such application.

4. The commissioner shall establish by rule and regulation the beginning date of the biennial registration period. In the event that a change in the established beginning date of the biennial registration period requires an adjustment in the duration of a registration period, there shall be a proportionate adjustment in the prescribed fee.

5. Each licensee who applies for registration as a funeral director, undertaker or embalmer during the second year of a biennial registration period shall pay a fee of twenty-five dollars for funeral director registration or twelve dollars and fifty cents for undertaker registration, and twelve dollars and fifty cents for embalmer registration. However, initial registration for funeral directors shall not require such fee.

6. If any funeral director, undertaker or embalmer continues to practice, or any owner continues to operate a funeral firm, without registration, as herein provided, his license or business registration may be suspended or revoked by the department in accordance with the provisions of this article.

7. A funeral director, undertaker or embalmer who has been heretofore duly licensed and registered to practice in this state whose license shall not have been revoked or suspended, and who either before or after registration as required by this section shall have temporarily abandoned the practice of funeral directing, undertaking or embalming, or shall have removed from the state, may register within the state upon complying with the provisions of this section for registration, and also, filing with the department a statement of such facts subscribed and affirmed by him as true under the penalties of perjury.

8. Every funeral director, undertaker or embalmer shall communicate with the department in the event that the application blank for registration fails to reach them.

9. A funeral director, undertaker or embalmer who has been heretofore duly licensed and registered to practice in this state whose license

shall not have been revoked or suspended and who no longer practices funeral directing, may apply for an inactive certificate of registration. The fee for an inactive certificate of registration shall be the same amount as the regular certificate of registration. Upon complying with the provisions of this section and section three thousand four hundred twenty-nine of this title for registration, a regular certificate of registration shall be reinstated. An inactive registrant shall be considered duly licensed and registered solely for the purposes of section three thousand four hundred forty-three of this article, provided, however, that any such registrant using his or her name in any advertising or promotional materials shall disclose their inactive status in such materials.