

SHORT TITLE: Professions and occupations; requiring licensure of crematories by Oklahoma State Board of Embalmers and Funeral Directors and providing for related rules and requirements; recodification; effective date.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 163

By: Leftwich

AS INTRODUCED

An Act relating to professions and occupations; amending 59 O.S. 1991, Sections 395.1, 396.2, 396.2a, 396.3, 396.3a, 396.4, 396.6, 396.12, 396.12a and 396.17, which relate to regulation of funeral services and 63 O.S. 1991, Sections 1-330 and 1-331, which relate to licensure and inspection of crematories; clarifying statutory reference; deleting obsolete language; modifying gender references; adding definitions; requiring licensure of crematories by Oklahoma State Board of Embalmers and Funeral Directors and providing for related rules and requirements; setting fee; prohibiting certain act; granting power to inspect crematories; expanding rulemaking and enforcement authority of Board to include crematories; allowing certain crematories to be licensed and governed under certain previous rules and requirements under certain conditions; making license of such crematories nontransferable; removing authority for licensure and inspection of crematories by State Commissioner of Health; providing for recodification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 1991, Section 395.1, is amended to read as follows:

Section 395.1 ~~Sections 396 through 396.26 of Title 59 of the Oklahoma Statutes, and Sections 3, 5, 9, 10, 11, 12, 13 and 14~~ Section 395.1 et seq. of this ~~act~~ title shall be known and may be cited as the "Funeral Services Licensing Act".

SECTION 2. AMENDATORY 59 O.S. 1991, Section 396.2, is amended to read as follows:

Section 396.2 As used in the Funeral Services Licensing Act:

1. "Embalmer" means a person who disinfects or preserves dead human remains, entire or in part, by the use of chemical substances, fluids or gases in the remains, or by the introduction of same into the remains by vascular or hypodermic injection, or by direct application into organs or cavities;

2. "Funeral director" means a person who:

- a. is engaged in or conducts, or holds ~~himself~~ oneself out as being engaged in preparing for the burial or disposal and directing and supervising the burial or disposal of dead human remains,
- b. is engaged in or conducts or holds ~~himself~~ oneself out as being engaged in maintaining a funeral establishment for the preparation and the disposition, or for the care of dead human remains,
- c. uses, in connection with ~~his~~ one's name or funeral establishment, the words "funeral director" or "undertaker" or "mortician" or any other title implying that ~~he~~ the person is engaged as a funeral director, or
- d. sells funeral service merchandise to the public;

3. "Funeral establishment" means a place of business used in the care and preparation for burial or transportation of dead human

remains, or any place where any person or persons shall hold forth and be engaged in the profession of undertaking or funeral directing;

4. "Apprentice" means a person who is engaged in learning the practice of embalming or of the practice of funeral directing, as the case may be, under the instruction and personal supervision of a duly licensed embalmer or a duly licensed funeral director of and in the State of Oklahoma, pursuant to the provisions of the Funeral Services Licensing Act, and who is duly registered as such with ~~said~~ the Board;

5. "Board" means the Oklahoma State Board of Embalmers and Funeral Directors;

6. "Directing a funeral" or "funeral directing" means directing funeral services from the time of the first call until interment or entombment services are completed, or until the remains are released for transport to a crematorium, or released to a public carrier;

7. "First call" means the beginning of the relationship and duty of the funeral director to take charge of dead human remains and have such remains prepared by embalming, cremation, or otherwise, for burial or disposition, provided all laws pertaining to public health in this state are complied with. First call does not include calls made by ambulance, when the person dispatching the ambulance does not know whether or not dead human remains are to be picked up;

8. "Personal supervision" means the physical presence of a licensed funeral director or embalmer at the specified time and place of the providing of acts of funeral service;

9. "Limited service establishment" means a fixed place of business consisting of an equipped preparation room, and other rooms as necessary, for the specified purpose of performing preparation and shipping services of dead human remains to funeral establishments inside and outside this state;

10. "Funeral service merchandise or funeral services" means those products and services normally provided by funeral establishments, including, but not limited to, the sale of burial supplies and equipment, but excluding the sale by a cemetery of lands or interests therein, services incidental thereto, markers, memorials, monuments, equipment, crypts, niches or outer enclosures; and

11. "Outer enclosure" means a grave liner, grave box, or grave vault;

12. "Crematory" means a fixed place of business consisting of a building or portion thereof which houses the cremation chamber and holding facility for the specified purpose of holding and cremating dead human remains, or any place where any person or persons shall hold forth and be engaged in the practice of cremating dead human remains; and

13. "Cremation" means the technical process, using heat, that reduces dead human remains to bone fragments and in which the reduction takes place through heat and evaporation.

SECTION 3. AMENDATORY 59 O.S. 1991, Section 396.2a, is amended to read as follows:

Section 396.2a In addition to any other powers and duties imposed by law, the Oklahoma State Board of Embalmers and Funeral Directors shall have the power and duty to:

1. Prescribe and promulgate rules ~~and regulations~~ necessary to effectuate the provisions of the Funeral Services Licensing Act, and to make orders as it may deem necessary or expedient in the performance of its duties;

2. Prepare, conduct and grade examinations, written or oral, of persons who apply for the issuance of licenses to them;

3. Determine the satisfactory passing score on such examinations and issue licenses to persons who pass the examinations or are otherwise entitled thereto;

4. Determine eligibility for licenses and certificates of apprenticeship;
5. Issue licenses for funeral directors, embalmers, funeral establishments, limited service establishments, crematories and for sale of funeral service merchandise;
6. Issue certificates of apprenticeship;
7. Upon good cause shown, as hereinafter provided, deny the issuance of a license or certificate of apprenticeship or suspend, revoke or refuse to renew licenses or certificates of apprenticeship, and upon proper showing, to reinstate them;
8. Review, affirm, reverse, vacate or modify its order with respect to any such denial, suspension, revocation or refusal to renew;
9. Establish and levy administrative penalties against any person or entity who violates any of the provisions of the Funeral Services Licensing Act or any rule ~~or regulation~~ promulgated pursuant thereto;
10. Obtain an office, secure facilities and employ, direct, discharge and define the duties and set the salaries of office personnel as deemed necessary by the Board;
11. Initiate disciplinary, prosecution and injunctive proceedings against any person or entity who violates any of the provisions of the Funeral Services Licensing Act or any rule ~~or regulation~~ promulgated pursuant thereto;
12. Investigate alleged violations of the Funeral Services Licensing Act or of the rules ~~and regulations~~, orders or final orders of the Board;
13. Promulgate rules of conduct governing the practice of licensed funeral directors, embalmers, funeral establishments, limited service establishments, crematories and sale of funeral service merchandise;

14. Keep accurate and complete records of its proceedings and certify the same as may be appropriate;

15. Request prosecution by the district attorney or the Attorney General of this state of any person or any violation of the Funeral Services Licensing Act;

16. Whenever it deems it appropriate, confer with the Attorney General of this state or ~~his~~ assistants in connection with all legal matters and questions; and

17. Take such other action as may be reasonably necessary or appropriate to effectuate the Funeral Services Licensing Act.

SECTION 4. AMENDATORY 59 O.S. 1991, Section 396.3, is amended to read as follows:

Section 396.3 A. The Oklahoma State Board of Embalmers and Funeral Directors shall determine the qualifications necessary to enable any person to practice as a funeral director or embalmer, and prescribe the requirements for a funeral establishment, limited service establishment, crematory, or funeral service merchandise license. The Board shall examine all applicants for licenses to practice as a funeral director or embalmer. The Board shall issue the proper licenses to applicants who successfully pass such examination and qualify pursuant to any additional requirements the Board may prescribe.

B. The minimum requirements for a license to practice funeral directing or embalming, or both, are as follows:

1. An applicant for a license to practice embalming shall be at least twenty (20) years of age, a legal resident of this state, a citizen of the United States, and of good moral character. In addition, said applicant shall have at least sixty (60) accredited hours of study from an accredited college or university or equivalent as determined by the Board, shall be a graduate of a school of mortuary science accredited by the Conference of Funeral Service Examining Boards of the United States and approved by the

Board, and have served one (1) year as a registered apprentice. The applicant may serve as a registered apprentice prior to enrollment in an approved school of mortuary science, or subsequent to graduation from said school.

Curriculum of study for an embalmer in a school of mortuary science shall include the following subjects:

- a. mortuary science to include embalming technique, chemistry of embalming, color harmony, discoloration and its causes, effects, and treatment, treatment of special cases, restorative art, funeral management, professional ethics~~;~~ and
- b. anatomy~~;~~ and
- c. organic and inorganic chemistry~~;~~ and
- d. pathology~~;~~ and
- e. microbiology~~;~~ and
- f. sanitation and hygiene~~;~~ and
- g. public health regulations~~;~~ and
- h. mortuary law and administration.

2. An applicant for a license to practice as a funeral director shall be a licensed embalmer or shall have available a licensed embalmer. An applicant who graduates from an approved school of mortuary science, having an integrated course of study for an embalmer and funeral director, may make application to take an examination for both licenses. If the applicant graduates from a school of mortuary science granting a certificate of graduation as a funeral director, ~~said~~ the applicant shall also complete the following subjects:

- a. mortuary management and administration~~;~~ and
- b. business education, including business law~~;~~ and
- c. legal medicine and toxicology (as it pertains to funeral directing)~~;~~ and
- d. public relations and psychology~~;~~ and

e. public health, hygiene and sanitary science.

C. The Board shall issue the appropriate license to any qualified applicant whose application has been approved by the Board, and who has paid the fees required by Section 396.4 of this title, has passed the required examination with a general average of not less than seventy-five percent (75%) and has demonstrated to the Board proficiency as an embalmer or funeral director.

D. The Board shall maintain for public inspection a list of all accredited schools of embalming and mortuary science.

SECTION 5. AMENDATORY 59 O.S. 1991, Section 396.3a, is amended to read as follows:

Section 396.3a The following persons, professions and businesses shall be required to be licensed pursuant to the Funeral Services Licensing Act:

1. Any person engaged or who may engage in:

- a. the practice or profession of funeral directing or embalming,
- b. maintaining the business of a funeral establishment ~~or~~ limited service establishment or crematory,
- c. the sale of any funeral service merchandise, or
- d. providing funeral services; and

2. Any funeral establishment ~~or~~ limited service establishment or crematory.

SECTION 6. AMENDATORY 59 O.S. 1991, Section 396.4, is amended to read as follows:

Section 396.4 A. Unless otherwise provided by law, the following shall be the fees charged for the licenses, registrations, and examinations required by the Funeral Services Licensing Act:

Funeral Director License or Renewal	\$50.00
Embalmer License or Renewal	\$50.00
Registration for Funeral Director Apprentice	
or Embalmer Apprentice	\$25.00

Reinstatement of Funeral Director Apprentice	
or Embalmer Apprentice	\$25.00
Embalmer Examination	\$40.00
Funeral Director Examination	\$40.00
Funeral Establishment License or Renewal	\$150.00
Limited Service Establishment License or Renewal	\$150.00
Reciprocal License for Funeral Director	
or Embalmer	\$150.00
Funeral Service Merchandise License	
or Renewal	\$25.00
<u>Crematory License or Renewal</u>	<u>\$150.00</u>

B. Fees for funeral director examinations and embalmer examinations shall be paid at least thirty (30) days prior to the scheduled examination. An examination fee shall not be refundable.

C. The Oklahoma State Board of Embalmers and Funeral Directors is authorized to determine and fix special administrative service fees. Each such fee shall not be in excess of Two Hundred Dollars (\$200.00).

D. If any renewal fee required by this section is not paid on or before January 31 of each year, the amount of ~~said~~ the fee shall be doubled and if ~~said~~ the fee is not paid on or before April 30 of each year, ~~such~~ the license shall be in default and shall terminate automatically.

SECTION 7. AMENDATORY 59 O.S. 1991, Section 396.6, is amended to read as follows:

Section 396.6 A. No person shall operate a funeral establishment ~~or~~, limited service establishment or crematory, engage in the sale of any funeral service merchandise to the public, provide funeral services, carry on the business or profession of embalming or funeral directing or perform any of the functions, duties, or powers prescribed for funeral directors or embalmers pursuant to the provisions of the Funeral Services Licensing Act

unless such person has obtained the license specified by rules ~~and regulations~~ promulgated pursuant to the Funeral Services Licensing Act and has otherwise complied with the provisions of the Funeral Services Licensing Act. ~~Said license~~ Licenses shall be nontransferable and nonnegotiable.

B. A license shall not be issued to any person for the operation of a funeral or embalming establishment which does not employ an embalmer licensed pursuant to the provisions of Section 396.3 of this title. An individual who supervises a funeral or embalming establishment shall be licensed pursuant to the provisions of Section 396.3 of this title.

C. The holder of any license issued pursuant to the Funeral Services Licensing Act, or any rules ~~and regulations~~ promulgated pursuant thereto, shall have ~~such~~ the license recorded in the office of the county clerk in the county in which the licensee is engaged in such funeral business.

SECTION 8. AMENDATORY 59 O.S. 1991, Section 396.12, is amended to read as follows:

Section 396.12 A. 1. Any place where a person shall hold forth by word or act that ~~such~~ the person is engaged in the profession of undertaking or funeral directing shall be deemed as a funeral establishment and shall be licensed as such pursuant to the provisions of the Funeral Services Licensing Act.

2. In addition, every funeral establishment shall be operated by a full-time person holding a valid funeral director's license. Each establishment shall have conspicuously displayed at the entrance the name of the person licensed to conduct such establishment.

B. The Oklahoma State Board of Embalmers and Funeral Directors shall have the power to inspect the premises in which funeral directing is conducted or where embalming is practiced or where an applicant ~~proposed~~ proposes to practice, and ~~such~~ where cremation is

conducted or where an applicant proposes to conduct cremation. The
Board is hereby empowered to prescribe and endorse rules ~~and~~
~~regulations~~ for reasonable sanitation of such establishments,
including necessary drainage, ventilation, and necessary and
suitable instruments for such business or profession.

C. Any place where a person shall hold forth by word or act
that such person is engaged in preparing and shipping of dead human
remains to funeral establishments inside and outside this state
shall be deemed a limited service establishment and shall be
licensed as such pursuant to the provisions of the Funeral Services
Licensing Act.

D. Any place where a person shall hold forth by word or act
that the person is operating a crematory or is engaged in cremating
dead human remains shall be deemed a crematory and shall be licensed
pursuant to the provisions of the Funeral Services Licensing Act.

SECTION 9. AMENDATORY 59 O.S. 1991, Section 396.12a, is
amended to read as follows:

Section 396.12a A. No person, unless licensed as an embalmer,
shall place any chemical substance, fluid or gas on or in dead human
remains ~~who is not a licensed embalmer~~. This prohibition shall not
apply to a registered apprentice, working under the supervision of a
licensed embalmer and shall not apply to medical students or their
teachers in state-maintained medical schools in this state.

B. No person shall act or hold ~~himself~~ oneself out as a funeral
director, embalmer, apprentice, provide funeral services or
merchandise or operate a funeral establishment or a limited service
establishment, or crematory without a current license or
registration issued pursuant to the Funeral Services Licensing Act.

SECTION 10. AMENDATORY 59 O.S. 1991, Section 396.17, is
amended to read as follows:

Section 396.17 The Oklahoma State Board of Embalmers and
Funeral Directors shall have the power to select from its own

members a president and a secretary-treasurer and to make, adopt, promulgate and enforce reasonable rules ~~and regulations~~ for the:

1. Transaction of its business;
2. Sanitary management of funeral homes and crematories;
3. Work of embalmers and apprentices;
4. Management of the Board's affairs;
5. Betterment and promotion of the educational standards of the

profession of embalming and the standards of service and practice to be followed in the profession of embalming and funeral directing in this state; ~~and~~

6. ~~Carrying into effect~~ Effectuation of any of the provisions of the Funeral Services Licensing Act, as it may deem expedient, just and reasonable and consistent with the laws of this state; and

7. Effectuation of the crematory licensing and regulatory provisions of the Funeral Service Licensing Act. Provided, any crematory which has been licensed prior to the effective date of this act and which maintains its license by payment of any required license renewal fees as set forth in Section 396.4 of this title, shall be licensed and governed by the Board under the rules and requirements which applied to the crematory prior to the effective date of this act. The license of the crematory is nontransferable. At such time that the license of the crematory is in default for failure to pay the renewal fee, or is not renewed or revoked, or any form of modification, enhancement or change is made to the crematory, the crematory shall then be governed by the rules promulgated pursuant to this act and requirements imposed pursuant thereto.

SECTION 11. AMENDATORY 63 O.S. 1991, Section 1-330, is amended to read as follows:

Section 1-330. A. After cremation of the body of a deceased person within ~~the State of Oklahoma~~ this state, the special permit ~~therefor~~ shall be returned to the local registrar who issued ~~such~~

the permit, with a certificate ~~thereon~~, signed by the person in charge of the crematory which performed the service, showing the date ~~thereof~~ and the name of the person or persons to whom the residue resulting from ~~such~~ the cremation was delivered, or showing such other disposition as may have been made ~~thereof~~.

B. Each crematory shall keep a complete record of each cremation performed by it, and all such records, together with all other records of the crematory in connection therewith, shall be open, at all reasonable times, to inspection by the ~~State Commissioner of Health or his~~ Oklahoma State Board of Embalmers and Funeral Directors or duly authorized agents or employees of the Board.

C. The local registrar, after a special cremation permit ~~shall have been~~ is returned by a crematory, shall complete ~~his~~ the record thereof and, at the time of making ~~his~~ reports of permits issued and certificates filed, shall transmit ~~such~~ the special permit, together with the district attorney's certificate filed as condition precedent to the issuance thereof, to the State Commissioner of Health, and shall be paid, out of any funds available for compensation of local registrars, a sum not to exceed twenty-five cents (\$0.25), to be determined by the Commissioner, for each complete special cremation permit so transmitted ~~by him~~.

SECTION 12. AMENDATORY 63 O.S. 1991, Section 1-331, is amended to read as follows:

Section 1-331. No person shall dispose of the body of any deceased person by cremation, dehydration, combustion, or other similar means, within ~~the State of Oklahoma~~ this state, without first having obtained ~~from the State Commissioner of Health an annual~~ a license to operate a crematory, pursuant to the provisions of Section 395.1 et seq. of Title 59 of the Oklahoma Statutes. ~~Application for such annual license shall be made to the Commissioner upon forms prescribed and furnished by him, shall give~~

~~the location of the crematory, and such other information as the Commissioner shall require, and shall be accompanied by the license fee not to exceed Twenty-five Dollars (\$25.00), to be determined by the State Board of Health. Annual licenses shall expire on the 31st day of December each year, shall specify the name or names of the owners of the crematory and the location thereof, and shall not be transferable either as to the ownership of the crematory or as to the location thereof. The first annual license issued for any crematory at any location shall not be issued by the Commissioner until he has been satisfied that the crematory is, or will be, so constructed as to be capable of reducing the body of a deceased person to a residue which shall not weigh more than five percent (5%) of the weight of the body immediately after death. Such a showing may, but need not, be required by the Commissioner for any subsequent annual license issued for the same crematory. All crematories shall be subject to inspection, at all reasonable times, by the Commissioner or his duly authorized agents or employees.~~

SECTION 13. RECODIFICATION 63 O.S. 1991, Sections 1-330 and 1-331, shall be recodified as Sections 396.28 and 396.29 of Title 59 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 14. This act shall become effective November 1, 1995.

45-1-0267 JY