

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 167

By: Crutchfield

AS INTRODUCED

An Act relating to professions and occupations; amending 59 O.S. 1991, Sections 396, as last amended by Section 1, Chapter 3, O.S.L. 1998, 396.3, as amended by Section 4, Chapter 64, O.S.L. 1999, 396.4, as amended by Section 6, Chapter 64, O.S.L. 1999, 396.6, as amended by Section 7, Chapter 64, O.S.L. 1999, 396.8, as amended by Section 8, Chapter 64, O.S.L. 1999, 396.10, 396.12, as amended by Section 10, Chapter 64, O.S.L. 1999, 396.12b, 396.12c, as amended by Section 12, Chapter 64, O.S.L. 1999, 396.12f, 396.14, as amended by Section 14, Chapter 64, O.S.L. 1999, 396.17, 396.20, 396.21 and 396.27 (59 O.S. Supp. 2000, Sections 396, 396.3, 396.4, 396.6, 396.8, 396.12, 396.12c, and 396.14), which relate to the Funeral Services Licensing Act; deleting statement of option of Governor to make appointments from list furnished by association; clarifying accreditation and curriculum requirements; changing examination fees; changing date by which license nonrenewal fee shall be doubled; substituting display of license or certificate at place of business for filing with county clerk; substituting endorsement for reciprocity requirement; requiring rule changes be published in accordance with Administrative Procedures Act; prohibiting performance or advertising of funeral service at an unlicensed location or implication of such in advertising; clarifying supervision requirement; eliminating exemption of burial associations from prohibition on solicitation; clarifying prohibition on solicitation; deleting obsolete language; changing time for schedule of hearing; deleting requirement that receipts and disbursements be reported to Secretary of State; providing for Board to select a vice president; updating and clarifying references; changing and restating responsibility for precautions to reduce risk of transmission of communicable disease; and declaring an emergency.

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

SECTION 1. AMENDATORY 59 O.S. 1991, Section 396, as last amended by Section 1, Chapter 3, O.S.L. 1998 (59 O.S. Supp. 2000, Section 396), is amended to read as follows:

Section 396. There is hereby re-created, to continue until July 1, 2004, in accordance with the provisions of the Oklahoma Sunset Law, as provided by Section 3901 et seq. of Title 74 of the Oklahoma Statutes, the Oklahoma State Board of Embalmers and Funeral Directors. The Board shall consist of seven (7) persons, who shall be appointed by the Governor. The term of membership of each member of the Board shall be five (5) years from the expiration of the term of the member succeeded. Any member having served as a member of the Board shall be eligible for reappointment. Provided that, a member of the Board shall serve no more than two consecutive terms and any unexpired term that a member is appointed to shall not apply to this limit. The Governor shall appoint the necessary members to the Board upon vacancies and immediately prior to the expiration of the various terms. ~~Upon request of the Governor, appointments of a licensed embalmer and funeral director member of the Board shall be made from a list of five qualified persons submitted by the Oklahoma Funeral Directors Association.~~ An appointment to fill a vacancy shall be for the unexpired term. A member of the Board shall serve until a successor is appointed and qualified. No person shall be a member of the Board, unless, at the time of appointment, the person is of good moral character and a resident of this state. Five of the members shall have been actively engaged in the practice of embalming and funeral directing in this state for not less than seven (7) consecutive years immediately prior to the appointment of the person, and each of such members shall have an active license as provided by this act and such member shall keep the license effective and remain a resident of this state during the entire time the person serves on the Board. Two of the members of the Board shall be chosen from the general public, one of whom shall, if possible, be a person licensed and actively engaged in the health care field, and such members shall not be licensed funeral directors or embalmers or have any interest, directly or indirectly, in any

funeral establishment or any business dealing in funeral services, supplies or equipment. These two members shall be appointed to serve for five-year terms.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 396.3, as amended by Section 4, Chapter 64, O.S.L. 1999 (59 O.S. Supp. 2000, 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 or commercial embalming establishment. 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:

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 or permanent resident of the United States, and of good moral character. In addition, said applicant shall have at least sixty (60) semester hours of study earned, measured in quarter or clock hours, from a regionally accredited college or university, shall be a graduate of a program of mortuary science accredited by the American Board of Funeral Service Education ~~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 and/or funeral director is a program of mortuary science which shall be that prescribed by ~~the~~

~~State Board of Embalmers and Funeral Directors in accordance with~~  
the American Board of Funeral Service Education.

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 3. AMENDATORY 59 O.S. 1991, Section 396.4, as amended by Section 6, Chapter 64, O.S.L. 1999 (59 O.S. Supp. 2000, 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 and such fees shall not exceed the following amounts:

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	<del>\$40.00</del>
	<u>amount charged by</u>
	<u>entity providing</u>
	<u>the examination</u>
Funeral Director Examination	<del>\$40.00</del>
	<u>amount charged by</u>
	<u>entity providing</u>
	<u>the examination</u>
Funeral Establishment License or Renewal	\$150.00

Commercial Embalming Establishment

License or Renewal \$150.00

~~Reciprocal~~ License by endorsement for

Funeral Director or Embalmer \$150.00

Change of Funeral Director in Charge \$150.00

B. Fees for funeral director examinations and embalmer examinations shall be paid 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~~ December 31 of each year, the amount of said fee shall be doubled and if said fee is not paid on or before April 30 of ~~each~~ the following year, such license shall be in default and shall terminate automatically.

SECTION 4. AMENDATORY 59 O.S. 1991, Section 396.6, as amended by Section 7, Chapter 64, O.S.L. 1999 (59 O.S. Supp. 2000, Section 396.6), is amended to read as follows:

Section 396.6 A. No person shall operate a funeral establishment or commercial embalming establishment, 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 promulgated pursuant to the Funeral Services Licensing Act and has otherwise complied with the provisions of the Funeral Services Licensing Act. Said license 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 or certificate issued pursuant to the Funeral Services Licensing Act, or any rules promulgated pursuant thereto, shall have such license ~~recorded in the office of the county clerk in the county in which the licensee is engaged in such funeral~~ or certificate conspicuously displayed in the holder's place of business.

SECTION 5. AMENDATORY 59 O.S. 1991, Section 396.8, as amended by Section 8, Chapter 64, O.S.L. 1999 (59 O.S. Supp. 2000, Section 396.8), is amended to read as follows:

Section 396.8 ~~A. The Board shall have the power to issue reciprocal licenses to applicants licensed in other states which have equal or like educational requirements as required by this state or the Board.~~

~~B. A license as an embalmer or funeral director shall be issued without examination to an out-of-state resident intending to become a resident of this state, who submits to the Board satisfactory evidence that said applicant has met all the requirements of the Funeral Services Licensing Act and pays the fees required by Section 396.4 of this title.~~

~~C.~~ The Board may issue an appropriate license by endorsement without further apprenticeship to ~~a resident of a state which an applicant who~~ does not have the ~~same~~ educational requirements ~~necessary for reciprocity with this state~~ found in Section 396.3, if said applicant:

1. Has a current license to practice as an embalmer or funeral director in the state of residence of the person;

2. Has been an active embalmer or funeral director practicing in the state of residence of the person for at least five (5) years;
3. Has never been convicted of a felony and has never been convicted of a misdemeanor related to funeral service;
4. Has never had said license revoked or suspended;
5. Is not currently facing disciplinary action;
6. Intends to practice in this state;
7. Has filed such documents as are required by the Board;
8. Has paid the fees as required by Section 396.4 of this title;
9. Is a citizen or permanent resident of the United States;
10. Is a graduate of an accredited program of mortuary science;
11. Has passed the National Board Examination or State Board Examination; and
12. Has passed the Oklahoma State Law Examination.

SECTION 6. AMENDATORY 59 O.S. 1991, Section 396.10, is amended to read as follows:

Section 396.10 Any person desiring to engage in the profession or business of embalming or funeral directing or both, as defined herein, shall make application, be required to show such preliminary requisites, comply with the rules of said Board, and take such examinations as shall be deemed necessary by the Board in its rules. The Board shall publish in its rules the subject to be covered in said examination and the standards to be attained thereon. Changes in the rules ~~and regulations~~ shall be published ~~and be given due publicity at least fifteen (15) days before coming effective in~~ accordance with the Administrative Procedures Act.

SECTION 7. AMENDATORY 59 O.S. 1991, Section 396.12, as amended by Section 10, Chapter 64, O.S.L. 1999 (59 O.S. Supp. 2000, Section 396.12), is amended to read as follows:

Section 396.12 A. Any place where a person shall hold forth by word or act that such 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. A funeral establishment shall not do business in a location that is not licensed as a funeral establishment, and shall not advertise a service that is available from an unlicensed location. In addition, every funeral establishment shall be operated by a full time person holding a valid funeral director's license. Each establishment license shall have be conspicuously displayed at the ~~entrance~~ the name of the person licensed to conduct such establishment location.

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 to practice, and such Board is hereby empowered to prescribe and endorse rules for the professional practices and 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 commercial embalming establishment and shall be licensed as such pursuant to the provisions of the Funeral Services Licensing Act.

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

Section 396.12b A. Each funeral conducted within this state shall be under the personal supervision of a ~~duly-licensed~~ funeral director who holds a ~~valid~~ license from the Oklahoma State Board of Embalmers and Funeral Directors. A registered apprentice may assist in conducting funerals. To conduct a funeral shall require the personal supervision of a licensed funeral director from the time of

the first call until interment is completed. A funeral director conducting a funeral in this state shall ensure that the casket or other container holding the deceased human remains shall not incur any damage other than that which is normally incurred in the burial or final disposition of human remains.

B. The embalming of dead human remains shall require the presence and the direct supervision of a duly-licensed embalmer, however, a licensed registered apprentice embalmer may perform the embalming of a dead human provided said registered apprentice embalmer is under the direct supervision of a duly-licensed embalmer.

C. Nothing in this section regarding the conduct of funerals or personal supervision of a licensed director, a registered apprentice embalmer, or licensed embalmer, shall apply to persons related to the deceased by blood or marriage. Further, nothing in this section shall apply or in any manner interfere with the duties of any state officer or any employee of a local state institution.

D. Dead human remains shall be picked up on first call only under the direction and personal supervision of a licensed funeral director or embalmer. Dead human remains may be transferred from one funeral home to another funeral home and from a funeral home to and from a morgue where an autopsy is to be performed without a licensed funeral director personally making the transfer. In circumstances in which there is no reasonable probability that unlicensed personnel will encounter family members or other persons with whom funeral arrangements are normally made by licensed funeral directors or embalmers, dead human remains may be picked up or transferred without the personal supervision of a funeral director or embalmer. Dead human remains may be picked up or transferred by a currently registered apprentice without the personal supervision of a funeral director or embalmer, provided however, any inadvertent contact with family members or other persons shall be restricted to

the currently registered apprentice identifying the employer to the person, arranging an appointment with the employer for any person who indicates a desire to make funeral arrangements for the deceased and making any disclosure to the person that is required by any federal or state regulation. A funeral director or embalmer who directs the removal or transfer of dead human remains without providing personal supervision shall be held strictly accountable for compliance with the requirements of, and exceptions to, first call as provided by the Funeral Services Licensing Act.

SECTION 9. AMENDATORY 59 O.S. 1991, Section 396.12c, as amended by Section 12, Chapter 64, O.S.L. 1999 (59 O.S. Supp. 2000, Section 396.12c), is amended to read as follows:

Section 396.12c After notice and hearing pursuant to Article II of the Administrative Procedures Act, the Oklahoma State Board of Embalmers and Funeral Directors may refuse to issue or renew, or may revoke or suspend, any license or registration for any one or combination of the following:

1. Conviction of a felony shown by a certified copy of the record of the court of conviction;
2. Conviction of a misdemeanor involving funeral services;
3. Gross malpractice or gross incompetency, which shall be determined by the Board;
4. False or misleading advertising as a funeral director or embalmer;
5. ~~Employment by the licensee of a person or persons to solicit funeral directing or embalming; provided, however, that this paragraph shall have no application to the operation of burial associations;~~
6. Violation of any of the provisions of the Funeral Services Licensing Act or any violation of Sections 201 through 231 of Title 8 of the Oklahoma Statutes;
7. 6. Fraud or misrepresentation in obtaining a license;

~~8.~~ 7. Using any casket or part thereof which has previously been used as a receptacle for, or in connection with, the burial or other disposition of dead human remains, unless such disclosure is made to the purchaser;

~~9.~~ 8. Violation of any rules of the Board in administering the purposes of the Funeral Services Licensing Act;

~~10.~~ 9. Use of intoxicating liquor sufficient to produce drunkenness in public, or habitual addiction to the use of habit-forming drugs or either;

~~11.~~ ~~Payment or causing to be paid, directly or indirectly, for the securing of business, or direct or indirect solicitation of business~~ 10. Solicitation of business, either personally or by an agent, from a dying individual or the relatives of a dead or dying individual, other than through general advertising;

~~12.~~ 11. Refusing to properly release a dead human body to the custody of the person entitled to custody;

~~13.~~ 12. Violating applicable state laws relating to the failure to file a death certificate, cremation permit, or prearrangement or prefinancing of a funeral;

~~14.~~ 13. Failing to obtain other necessary permits as required by law in a timely manner;

~~15.~~ 14. Failing to comply with the Funeral Rules of the Federal Trade Commission, 15 U.S.C., Section 57a(a);

~~16.~~ 15. Failing to comply with any applicable provisions of the Funeral Services Licensing Act at the time of issuance or renewal;  
or

~~17.~~ 16. Improper issuance or renewal of a license or registration.

SECTION 10. AMENDATORY 59 O.S. 1991, Section 396.12f, is amended to read as follows:

Section 396.12f A. Complaints against any person for alleged violations of the Funeral Services Licensing Act or of any of the

rules ~~and regulations~~ issued pursuant thereto shall be in writing, signed by the complainant and filed with the executive secretary-treasurer of the Oklahoma State Board of Embalmers and Funeral Directors. In addition to the general public, any member or employee of the Board, or the executive secretary-treasurer thereof, may sign a complaint for any violation of which he has knowledge. All complaints shall name the person complained of, and shall state the time and place of the alleged violations and the facts of which the complainant has knowledge. Upon receiving a complaint, the Board shall examine the same, and determine whether there is a reasonable cause to believe the charges to be true.

B. If upon inspection, investigation or complaint, or whenever the Board determines that there are reasonable grounds to believe that a violation of the Funeral Services Licensing Act or of any rule ~~or regulation~~ promulgated pursuant thereto has occurred, the Board shall give written notice to the alleged violator specifying the cause of complaint. Such notice shall require that the matters complained of be corrected immediately or that the alleged violator appear before the Board at a time and place specified in the notice and answer the charges. The notice shall be delivered to the alleged violator in accordance with the provisions of subsection E of this section.

C. The Board shall afford the alleged violator an opportunity for a fair hearing in accordance with the provisions of subsection F of this section ~~within~~ not less than fifteen (15) days of receipt of the notice provided for in subsection B of this section. On the basis of the evidence produced at the hearing, the Board shall make findings of fact and conclusions of law and enter an order thereon. The Board shall give written notice of the order to the alleged violator and to any other persons who appeared at the hearing and made written request for notice of the order. If the hearing is held before a hearing officer as provided for in subsection F of

this section, such person shall transmit the record of the hearing together with recommendations for findings of fact and conclusions of law to the Board which shall thereupon enter its order. The Board may enter its order on the basis of such record or, before issuing its order, require additional hearings or further evidence to be presented. The order of the Board shall become final and binding on all parties unless appealed to the district court pursuant to Article II of the Administrative Procedures Act, within thirty (30) days after notice has been sent to the parties.

D. Whenever the Board finds that as a result of a violation of the Funeral Services Licensing Act or any rule ~~or regulation~~ promulgated thereto an emergency exists requiring immediate action to protect the public health or welfare, the Board may without notice or hearing issue an order stating the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such an order is directed shall comply with the order immediately but on application to the Board shall be afforded a hearing within ten (10) days of receipt of said notice. On the basis of such hearing, the Board shall continue the order in effect, revoke it or modify it. Any person aggrieved by such order continued after the hearing provided for in this subsection may appeal to the district court of the county in which said person resides, or in which his business is located, within thirty (30) days of the Board's action. Such appeal when docketed shall have priority over all cases pending on said docket, except criminal cases.

E. Except as otherwise expressly provided by law, any notice, order or other instrument issued by or pursuant to authority of the Board may be served on any person affected thereby personally, by publication or by mailing a copy of the notice, order or other instrument by registered mail directed to the person affected at his

last-known post office address as shown by the files or records of the Board. Proof of service shall be made as in the case of service of a summons or by publication in a civil action or may be made by the affidavit of the person who did the mailing. Such proof of service shall be filed in the office of the Board.

Every certificate or affidavit of service made and filed as provided for in this subsection shall be prima facie evidence of the facts therein stated. A certified copy thereof shall have like force and effect.

F. The hearings authorized by this section may be conducted by the Board. The Board may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the Board at any time and place. Such hearings shall be conducted in conformity with and records made thereof pursuant to Article II of the Administrative Procedures Act.

SECTION 11. AMENDATORY 59 O.S. 1991, Section 396.14, as amended by Section 14, Chapter 64, O.S.L. 1999 (59 O.S. Supp. 2000, Section 396.14), is amended to read as follows:

Section 396.14 The executive secretary-treasurer of the Board shall keep and preserve all records of the Board, issue all necessary notices to the embalmers, funeral directors and apprentices of the state, and perform such other duties as may be imposed upon the executive secretary-treasurer by said Board. The executive secretary-treasurer is hereby authorized and empowered to collect, in the name and on behalf of the Board, the fees prescribed in the Funeral Services Licensing Act, and all fees so collected shall at the end of each month be deposited by the executive secretary-treasurer with the State Treasurer. The State Treasurer shall place ten percent (10%) of the money so received in the general fund of the state, and the balance in a special fund to be known as the "Fund of the State Board of Funeral Directors and Embalmers". Payment from said fund shall be upon warrants drawn by

the State Treasurer against claims submitted by the Board to the Director of State Finance for audit and payment. All monies so received in said fund may be used by the Board in carrying out the provisions of the Funeral Services Licensing Act.

~~An accounting of the funds accumulated under the provisions of the Funeral Services Licensing Act shall be rendered semiannually of receipts and disbursements to the Secretary of the State of Oklahoma.~~

SECTION 12. 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~~ vice-president and to make, adopt, promulgate and enforce reasonable rules ~~and regulations~~ for the:

1. Transaction of its business;
2. Sanitary management of funeral homes;
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 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.

SECTION 13. AMENDATORY 59 O.S. 1991, Section 396.20, is amended to read as follows:

Section 396.20 It shall be unlawful to embalm a dead human body when any fact within the knowledge or brought to the attention of the embalmer is sufficient to arouse suspicion of crime in connection with the cause of death of the deceased, until permission

of the coroner, or a justice of the peace, if there be no coroner, Medical Examiner has been first obtained.

SECTION 14. AMENDATORY 59 O.S. 1991, Section 396.21, is amended to read as follows:

Section 396.21 The Governor shall remove from membership of ~~said Board~~ the Oklahoma State Board of Embalmers and Funeral Directors, at any time, any member of ~~said the~~ Board for continued neglect of duty required by ~~this act~~ the Funeral Services Licensing Act, conduct involving moral turpitude or any violation of the ~~provisions of Section 14 of this act~~ the Funeral Services Licensing Act.

SECTION 15. AMENDATORY 59 O.S. 1991, Section 396.27 is amended to read as follows:

Section 396.27 A. ~~Each funeral director shall notify employees concerning risk exposures pursuant to Section 1 of this act and the rules and guidelines promulgated by the State Board of Health.~~

B. ~~Each funeral director and each employee of such funeral director shall adhere to the universal precautions for the prevention of the transmission of communicable diseases published by the Centers for Disease Control, U.S. Public Health Service, in the Morbidity and Mortality Weekly Report, Volume 36, Number 25 or as subsequently amended, during the handling of any body~~ In handling and preparing dead human bodies for final disposition, any person who comes in direct contact with an unembalmed dead human body or who enters a room where dead human bodies are being embalmed shall exercise all reasonable precautions to minimize the risk of transmitting any communicable disease from the body in accordance with federal regulation regarding the control of infectious disease and occupational and workplace health and safety.

SECTION 16. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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