

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1460

By: Coleman

AS INTRODUCED

An Act relating to funeral merchandise; amending 36 O.S. 2001, Sections 6121 and 6127, which relate to prepaid funeral benefits; prohibiting certain organizations from selling funeral merchandise on a prearranged basis; specifying that the display of retail prices be in conformity to Federal Trade Commission rules under certain circumstances; authorizing the Oklahoma Insurance Commissioner to promulgate certain rules; amending 59 O.S. 2001, Sections 396, 396.2a, 396.3a and 396.12c, which relate to the Funeral Services Licensing Act; modifying membership of the Oklahoma State Board of Embalmers and Funeral Directors; modifying duties of the Board; clarifying that certain entities are not required to be licensed by the Board; modifying reasons that the Board may take action on a license; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 6121, is amended to read as follows:

Section 6121. A. Any individual, firm, partnership, corporation, or association (hereinafter called "organization") which shall accept money or anything of value for prearranged, or prepaid funeral services, or funeral service merchandise as defined in the Funeral Services Licensing Act or for any contract providing future funeral services or funeral merchandise at a fixed price or at a cost plus a percentage, or at retail price less a percentage discount, or providing for any special consideration of any kind to be granted or made available to the purchaser or holder of such contract, in this state, under any sales contract, bond, certificate or other form of written document providing for prepaid, discounted or otherwise specially priced funeral or burial benefits or services or funeral merchandise to be delivered at an undetermined future

date dependent upon the death of a contracting party or other person designated by a contracting party (hereinafter called "prepaid funeral benefits") shall first obtain a permit from the Insurance Commissioner authorizing the transaction of this type of business before entering into any such contract. It shall be unlawful to sell prepaid funeral benefits unless the seller holds a valid, current permit at the time such contract is made. The seller shall not be entitled to enforce a contract made in violation of the act, but the purchaser or ~~his~~ the purchaser's heirs, or legal representative, shall be entitled to recover triple the amounts paid to the seller with interest thereon at the rate of six percent (6%) per annum under any contract made in violation hereof.

B. Organizations which sell funeral merchandise to the public, but do not sell funeral services and are not subject to regulation pursuant to the Funeral Services Licensing Act, are not eligible to sell funeral merchandise on a prearranged basis.

SECTION 2. AMENDATORY 36 O.S. 2001, Section 6127, is amended to read as follows:

Section 6127. Any organization or person offering for sale caskets or other articles of merchandise incidental to burial or funeral services shall prominently display thereon the retail price of ~~said~~ the caskets, or other articles of merchandise. The requirements for displaying retail prices for organizations not regulated pursuant to the Funeral Services Licensing Act shall be consistent with the requirements of Federal Trade Commission rules on the disclosure of prices and deceptive practices in the funeral industry. The Oklahoma Insurance Commissioner may promulgate rules necessary to implement this section.

SECTION 3. AMENDATORY 59 O.S. 2001, 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~~ Four 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~~ the members shall have an active license as provided by ~~this act~~ the Funeral Services Licensing Act and ~~such member~~ the members shall keep ~~the license~~ their licenses effective and remain a ~~resident~~ residents of this state during the entire time ~~the person serves~~ they serve on the Board. ~~Two~~ Three 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 one of whom shall be an advocate for issues related to older persons, and ~~such~~ these 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~~ three members shall be appointed to serve for five-year terms.

SECTION 4. AMENDATORY 59 O.S. 2001, 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 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 to licensure;
4. Determine eligibility for licenses and certificates of apprenticeship;
5. Issue licenses for funeral directors, embalmers, funeral establishments, and commercial embalming establishments;
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 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 promulgated pursuant thereto and against any person or entity who violates Federal Trade Commission rules enabling the use of funeral merchandise not purchased from a funeral establishment in a funeral service;

12. Investigate alleged violations of the Funeral Services Licensing Act or of the rules, orders or final orders of the Board;

13. Promulgate rules of conduct governing the practice of licensed funeral directors, embalmers, funeral establishments, and commercial embalming establishments 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. When it deems appropriate, confer with the Attorney General of this state or the assistants of the Attorney General 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 5. AMENDATORY 59 O.S. 2001, Section 396.3a, is amended to read as follows:

Section 396.3a A. 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 commercial embalming establishment,
- c. the sale of any funeral service merchandise, or
- d. providing funeral services; and

2. Any funeral establishment or commercial embalming establishment.

B. Persons and businesses which sell funeral merchandise to the public and do not provide any other services related to the transportation or preparation of dead human remains or the supervision of funerals shall be exempt from the Funeral Services Licensing Act.

SECTION 6. AMENDATORY 59 O.S. 2001, 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. Fraud or misrepresentation in obtaining a license;

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

10. 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;

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

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

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

15. Failing to comply with the Funeral Rules of the Federal Trade Commission, 15 U.S.C., Section 57a(a) or obstructing the use of funeral merchandise purchased from a person or business without a funeral director legally authorized to sell funeral merchandise to the public pursuant to Section 396.3a of this title;

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

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

SECTION 7. This act shall become effective November 1, 2003.

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