

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1826

By: Armes of the House

and

Barrington of the Senate

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10 COMMITTEE SUBSTITUTE

11 An Act relating to professions and occupations;
12 amending 59 O.S. 2011, Sections 396.2, 396.3,
13 396.12b, 396.12c and 396.30, which relate to the
14 Funeral Services Licensing Act; modifying definition;
15 providing for certain license; modifying transfer of
16 certain remains; modifying licensing procedures; and
17 providing an effective date.

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

19 SECTION 1. AMENDATORY 59 O.S. 2011, Section 396.2, is
20 amended to read as follows:

21 Section 396.2 As used in the Funeral Services Licensing Act:

22 1. "Embalmer" means a person who disinfects or preserves dead
23 human remains, entire or in part, by the use of chemical substances,
24 fluids or gases in the remains, or by the introduction of same into

1 the remains by vascular or hypodermic injection, or by direct
2 application into organs or cavities;

3 2. "Funeral director" means a person who:

4 a. is engaged in or conducts or represents themselves as
5 being engaged in preparing for the burial or disposal
6 and directing and supervising the burial or disposal
7 of dead human remains,

8 b. is engaged in or conducts or represents themselves as
9 being engaged in maintaining a funeral establishment
10 for the preparation and the disposition, or for the
11 care of dead human remains,

12 c. uses, in connection with the name of the person or
13 funeral establishment, the words "funeral director" or
14 "undertaker" or "mortician" or any other title
15 implying that the person is engaged as a funeral
16 director,

17 d. sells funeral service merchandise to the public, or

18 e. is responsible for the legal and ethical operation of
19 a crematory;

20 3. "Funeral establishment" means a place of business used in
21 the care and preparation for burial, commercial embalming, or
22 transportation of dead human remains, or any place where any person
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1 or persons shall hold forth and be engaged in the profession of
2 undertaking or funeral directing;

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

10 5. "Board" means the Oklahoma Funeral Board;

11 6. "Directing a funeral" or "funeral directing" means directing
12 funeral services from the time of the first call until final
13 disposition or release to a common carrier or release to next of kin
14 of the deceased or the designee of the next of kin;

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

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

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

9 10. "Funeral service merchandise or funeral services" means
10 those products and services normally provided by funeral
11 establishments and required to be listed on the General Price List
12 of the Federal Trade Commission, 15 U.S.C., Section 57a(a),
13 including, but not limited to, the sale of burial supplies and
14 equipment, but excluding the sale by a cemetery of lands or
15 interests therein, services incidental thereto, markers, memorials,
16 monuments, equipment, crypts, niches or outer enclosures;

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

19 12. "Funeral director in charge" means an individual licensed
20 as both a funeral director and embalmer designated by a funeral
21 service establishment, commercial embalming establishment, or
22 crematory who is responsible for the legal and ethical operation of
23 the establishment and is accountable to the Board;

1 13. "Authorizing agent" means a person legally entitled to
2 order the cremation or final disposition of particular human remains
3 pursuant to Section 1151 or 1158 of Title 21 of the Oklahoma
4 Statutes; and

5 14. "Cremation" means the technical process, using heat and
6 flame, that reduces human remains to bone fragments. The reduction
7 takes place through heat and evaporation. Cremation shall include,
8 but not be limited to, the processing and pulverization of the bone
9 fragments.

10 SECTION 2. AMENDATORY 59 O.S. 2011, Section 396.3, is
11 amended to read as follows:

12 Section 396.3 A. The Oklahoma Funeral Board shall determine
13 the qualifications necessary to enable any person to practice as a
14 funeral director or embalmer, and prescribe the requirements for a
15 funeral establishment or commercial embalming establishment. The
16 Board shall examine all applicants for licenses to practice as a
17 funeral director or embalmer. The Board shall issue the proper
18 licenses to applicants who successfully pass such examination and
19 qualify pursuant to any additional requirements the Board may
20 prescribe.

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

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1 An applicant for a license to practice embalming shall be at
2 least twenty (20) years of age, a legal resident of this state, a
3 citizen or permanent resident of the United States, and of good
4 moral character. In addition, an applicant shall have at least
5 sixty (60) semester hours of study earned, measured in quarter or
6 clock hours, from a regionally accredited college or university,
7 shall be a graduate of a program of mortuary science accredited by
8 the American Board of Funeral Service Education, and have served one
9 (1) year as a registered apprentice. The applicant may serve as a
10 registered apprentice prior to enrollment in an approved school of
11 mortuary science, or subsequent to graduation from said school.

12 Curriculum of study for an embalmer and/or funeral director is a
13 program of mortuary science which shall be that prescribed by the
14 American Board of Funeral Service Education.

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

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

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1 E. Each funeral director in charge as defined in Section 396.2
2 of this title shall have a current dual funeral director and
3 embalmer license. A funeral director in charge of a funeral service
4 establishment or crematory that does not have a current dual funeral
5 director and embalmer license on the effective date of this act
6 shall be considered to be grandfathered and may serve as funeral
7 director in charge of any funeral service establishment or crematory
8 in accordance with rules prescribed by the Board, but shall not
9 serve as funeral director in charge of a commercial embalming
10 establishment which shall require a current dual funeral director
11 and embalmer license.

12 SECTION 3. AMENDATORY 59 O.S. 2011, Section 396.12b, is
13 amended to read as follows:

14 Section 396.12b A. Each funeral conducted within this state
15 shall be under the personal supervision of a duly licensed funeral
16 director who holds a valid license from the Oklahoma Funeral Board.
17 A registered apprentice may assist in conducting funerals. To
18 conduct a funeral shall require the personal supervision of a
19 licensed funeral director from the time of the first call until
20 interment is completed. A funeral director conducting a funeral in
21 this state shall ensure that the casket or other container holding
22 the deceased human remains shall not incur any damage other than
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1 that which is normally incurred in the burial or final disposition
2 of human remains.

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

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

15 D. Dead human remains shall be picked up on first call only
16 under the direction and ~~personal~~ supervision of a licensed funeral
17 director or embalmer. ~~Dead human remains may be transferred from
18 one funeral home to another funeral home and from a funeral home to
19 and from a morgue where an autopsy is to be performed without a
20 licensed funeral director personally making the transfer. In
21 circumstances in which there is no reasonable probability that
22 unlicensed personnel will encounter family members or other persons
23 with whom funeral arrangements are normally made by licensed funeral~~

1 ~~directors or embalmers, dead human remains may be picked up or~~
2 ~~transferred without the personal supervision of a funeral director~~
3 ~~or embalmer.~~ Dead human remains may be picked up or transferred by
4 ~~a currently registered apprentice~~ without the personal supervision
5 of a funeral director or embalmer; provided however, any
6 inadvertent contact with family members or other persons shall be
7 restricted to ~~the currently registered apprentice~~ identifying the
8 employer to the person, arranging an appointment with the employer
9 for any person who indicates a desire to make funeral arrangements
10 for the deceased and making any disclosure to the person that is
11 required by any federal or state regulation. A funeral director or
12 embalmer who directs the removal or transfer of dead human remains
13 without providing personal supervision shall be held strictly
14 accountable for compliance with the requirements of, ~~and exceptions~~
15 ~~to, first call as provided by~~ the Funeral Services Licensing Act.

16 SECTION 4. AMENDATORY 59 O.S. 2011, Section 396.12c, is
17 amended to read as follows:

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

22 1. Conviction of a felony shown by a certified copy of the
23 record of the court of conviction;

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- 1 2. Conviction of a misdemeanor involving funeral services;
- 2 3. Gross malpractice or gross incompetency, which shall be
- 3 determined by the Board;
- 4 4. False or misleading advertising as a funeral director or
- 5 embalmer;
- 6 5. Violation of any of the provisions of the Funeral Services
- 7 Licensing Act or any violation of Sections 201 through 231 of Title
- 8 8 of the Oklahoma Statutes;
- 9 6. Fraud or misrepresentation in obtaining a license;
- 10 7. Using any casket or part thereof which has previously been
- 11 used as a receptacle for, or in connection with, the burial or other
- 12 disposition of dead human remains, unless the disclosure is made to
- 13 the purchaser;
- 14 8. Violation of any rules of the Board in administering the
- 15 purposes of the Funeral Services Licensing Act;
- 16 9. Use of intoxicating liquor sufficient to produce drunkenness
- 17 in public, or habitual addiction to the use of habit-forming drugs
- 18 or either;
- 19 10. Solicitation of business, either personally or by an agent,
- 20 from a dying individual or the relatives of a dead or individual
- 21 with a terminal condition, as defined by the Oklahoma Rights of the
- 22 Terminally Ill or Persistently Unconscious Act, other than through
- 23 general advertising;

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- 1 11. Refusing to properly release a dead human body to the
2 custody of the person entitled to custody;
- 3 12. Violating applicable state laws relating to the failure to
4 file a death certificate, cremation permit, or prearrangement or
5 prefinancing of a funeral;
- 6 13. Failing to obtain other necessary permits as required by
7 law in a timely manner;
- 8 14. Failing to comply with the Funeral Rules of the Federal
9 Trade Commission, 15 U.S.C., Section 57a(a);
- 10 15. Failing to comply with any applicable provisions of the
11 Funeral Services Licensing Act at the time of issuance or renewal;
- 12 16. Improper issuance or renewal of a license or registration;
- 13 17. Violating the provisions of subsection B of Section 396.12
14 of this title regarding advertisement of services at locations not
15 licensed by the Board;
- 16 18. The abuse of a corpse whereby a person knowingly and
17 willfully signs a certificate as having embalmed, cremated, or
18 prepared a dead human body for disposition when, in fact, the
19 services were not performed as indicated;
- 20 19. Simultaneous cremating of more than one human dead body
21 without express written approval of the authorizing agent; ~~or~~
- 22 20. Cremating human remains without the permit required by
23 Section 1-329.1 of Title 63 of the Oklahoma Statutes;
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1 21. Intentional interference with an investigation by the Board
2 or failure to allow access to funeral records during an
3 investigation or to produce records for an investigation; or

4 22. Failure to properly discharge financial obligations as
5 established by rule of the Board.

6 SECTION 5. AMENDATORY 59 O.S. 2011, Section 396.30, is
7 amended to read as follows:

8 Section 396.30 A. No person shall dispose of the body of any
9 deceased person by cremation or other similar means, within this
10 state, without first having obtained from the Oklahoma Funeral Board
11 an annual license to operate a crematory.

12 B. Application for an annual license shall be made to the
13 executive director of the Board upon forms prescribed and furnished
14 by the executive director, shall give the location of the crematory,
15 and any other information as the executive director shall require,
16 and shall be accompanied by the crematory license fee pursuant to
17 Section 396.4 of ~~Title 59 of the Oklahoma Statutes~~ this title. A
18 crematory shall not be licensed separately from a funeral or
19 commercial embalming establishment but shall be licensed in
20 conjunction with and operated by a funeral service or commercial
21 embalming establishment. Annual licenses shall expire on ~~the 31st~~
22 ~~day of~~ December 31 each year, shall specify the name or names of the
23 owners of the crematory and the location thereof, the funeral

1 director in charge, and shall not be transferable either as to the
2 ownership of the crematory, the funeral director in charge or as to
3 the location thereof. The first annual license issued for any
4 crematory at any location shall not be issued by the executive
5 director until the executive director has been satisfied:

6 1. That the crematory is, or will be, so constructed as to be
7 capable of reducing the body of a deceased person to a residue which
8 shall not weigh more than five percent (5%) of the weight of the
9 body immediately after death; and

10 2. That the crematory has at least one operable crematory for
11 cremation.

12 The requirement of paragraph 1 of this subsection may, but need not,
13 be waived by the executive director for any subsequent annual
14 license issued for the same crematory.

15 C. All funeral establishments performing cremations shall have
16 a licensed funeral director in charge.

17 D. Each funeral establishment performing cremation services
18 shall keep records as required by the Board to assure compliance
19 with all laws relating to the disposition of dead human remains and
20 shall file annually with the Board a report in the form prescribed
21 by the Board describing the operations of the licensee, including
22 the number of cremations performed, the disposition thereof, and any
23 other information that the Board may require by rule.

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UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 E. A funeral establishment performing cremation services shall
2 be subject to all local, state, and federal health and environmental
3 requirements and shall obtain all necessary licenses and permits
4 from the Oklahoma Funeral Board, and the appropriate federal and
5 state health and environmental authorities.

6 F. Crematories licensed by the Board on the effective date of
7 this act shall be exempt from the provisions of subsections C, D and
8 E of this section ~~until July 1, 2005.~~

9 G. All crematories shall be subject to inspection, at all
10 reasonable times, by the Board or its duly authorized agents or
11 employees.

12 SECTION 6. This act shall become effective November 1, 2013.

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14 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND FINANCIAL
15 SERVICES, dated 02/21/2013 - DO PASS, As Amended and Coauthored.

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