SENATE FLOOR VERSION
April 4, 2013

ENGROSSED HOUSE
BILL NO. 1826 By: Armes and Pittman of the House

and

Barrington of the Senate

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

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

SECTION 1. AMENDATORY 59 O.S. 2011, 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 represents themselves 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 represents themselves 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 the name of the person or funeral establishment, the words "funeral director" or "undertaker" or "mortician" or any other title implying that the person is engaged as a funeral director,

d. sells funeral service merchandise to the public, or

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

3. "Funeral establishment" means a place of business used in the care and preparation for burial, commercial embalming, 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 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 Board;

5. "Board" means the Oklahoma Funeral Board;

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

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. "Commercial embalming 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 and required to be listed on the General Price List of the Federal Trade Commission, 15 U.S.C., Section 57a(a), 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;

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

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

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

14. "Cremation" means the technical process, using heat and flame, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation. Cremation shall include,

but not be limited to, the processing and pulverization of the bone fragments.

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

Section 396.3 A. The Oklahoma Funeral Board 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, an 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 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 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.

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

SECTION 3. AMENDATORY 59 O.S. 2011, 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 Funeral Board. 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 4. AMENDATORY 59 O.S. 2011, 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 Funeral Board 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. 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;

6. Fraud or misrepresentation in obtaining a license;

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 the disclosure is made to the purchaser;

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

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

10. Solicitation of business, either personally or by an agent, from a dying individual or the relatives of a dead or individual with a terminal condition, as defined by the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, other than through general advertising;

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

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

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

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

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

16. Improper issuance or renewal of a license or registration;

17. Violating the provisions of subsection B of Section 396.12 of this title regarding advertisement of services at locations not licensed by the Board;

18. The abuse of a corpse whereby a person knowingly and willfully signs a certificate as having embalmed, cremated, or prepared a dead human body for disposition when, in fact, the services were not performed as indicated;

19. Simultaneous cremating of more than one human dead body without express written approval of the authorizing agent; ~~or~~

20. Cremating human remains without the permit required by Section 1-329.1 of Title 63 of the Oklahoma Statutes;

21. Intentional interference with an investigation by the Board or failure to allow access to funeral records during an investigation or to produce records for an investigation; or

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

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

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

B. Application for an annual license shall be made to the executive director of the Board upon forms prescribed and furnished

by the executive director, shall give the location of the crematory, and any other information as the executive director shall require, and shall be accompanied by the crematory license fee pursuant to Section 396.4 of ~~Title 59 of the Oklahoma Statutes~~ this title. A crematory shall not be licensed separately from a funeral or commercial embalming establishment but shall be licensed in conjunction with and operated by a funeral service or commercial embalming establishment. Annual licenses shall expire on ~~the 31st day of~~ December 31 each year, shall specify the name or names of the owners of the crematory and the location thereof, the funeral director in charge, and shall not be transferable either as to the ownership of the crematory, the funeral director in charge or as to the location thereof. The first annual license issued for any crematory at any location shall not be issued by the executive director until the executive director has been satisfied:

1. 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; and

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

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

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

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

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

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

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

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

COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
April 4, 2013 - DO PASS