

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

SENATE BILL 1316

By: Paxton

AS INTRODUCED

An Act relating to professions and occupations; amending 59 O.S. 2011, Sections 396.2, as amended by Section 1, Chapter 97, O.S.L. 2013, 396.3a, 396.4, as amended by Section 1, Chapter 375, O.S.L. 2015, 396.5, 396.12, 396.12a, 396.12b, as amended by Section 3, Chapter 97, O.S.L. 2013, 396.12c, as amended by Section 4, Chapter 97, O.S.L. 2013, 396.12d, 396.12e, 396.12f, 396.28, 396.29, and 396.30, as amended by Section 5, Chapter 97, O.S.L. 2013 (59 O.S. Supp. 2017, Sections 396.2, 396.4, 396.12b, 396.12c and 396.30), which relate to the Funeral Services Licensing Act, modifying and adding definitions; modifying licensing requirements and fees; modifying entity establishing fees; modifying entity issuing licenses; modifying requirements for licensing; modifying requirements for embalming and conducting funerals; modifying language regarding license requirements, refusal and penalties; modifying provisions relating to administrative penalty and costs; modifying authority to investigate complaints; and deleting authority to issue temporary permits in certain situations; repealing 59 O.S. 2011, Sections 396, as amended by Section 1, Chapter 61, O.S.L. 2014, 396.1, 396.1A, 396.1B, 396.1C, as amended by Section 264, Chapter 304, O.S.L. 2012, 396.2a, as amended by Section 1, Chapter 204, O.S.L. 2017, 396.3, as last amended by Section 2, Chapter 204, O.S.L. 2017, 396.5a, 396.5b, 396.6, 396.8, 396.10, 396.11, 396.16, 396.17, 396.22, and 396.31 (59 O.S. Supp. 2017, Sections 396, 396.1C, 396.2a and 396.3), which relate to the Funeral Services Licensing Act and the Oklahoma Funeral Board; and providing an effective date.

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

2 SECTION 1. AMENDATORY 59 O.S. 2011, Section 396.2, as
3 amended by Section 1, Chapter 97, O.S.L. 2013 (59 O.S. Supp. 2017,
4 Section 396.2), is amended to read as follows:

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

6 1. "Embalmer" means a person who has graduated from an
7 accredited school of mortuary science, and disinfects or preserves
8 dead human remains, entire or in part, by the use of chemical
9 substances, fluids or gases in the remains, or by the introduction
10 of same into the remains by vascular or hypodermic injection, or by
11 direct application into organs or cavities;

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

13 a. is engaged in or conducts or represents themselves as
14 being engaged in preparing for the burial or disposal
15 and directing and supervising the burial or disposal
16 of dead human remains,

17 b. is engaged in or conducts or represents themselves as
18 being engaged in maintaining a funeral establishment
19 for the preparation and the disposition, or for the
20 care of dead human remains,

21 c. uses, in connection with the name of the person or
22 funeral establishment, the words "funeral director" or
23 "undertaker" or "mortician" or any other title
24

1 implying that the person is engaged as a funeral
2 director,

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

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

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

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

18 ~~5. "Board" means the Oklahoma Funeral Board;~~

19 ~~6.~~ 4. "Directing a funeral" or "funeral directing" means
20 directing funeral services from the time of the first call until
21 final disposition or release to a common carrier or release to next
22 of kin of the deceased or the designee of the next of kin;

23 ~~7.~~ 5. "First call" means the beginning of the relationship and
24 duty of the funeral director to take charge of dead human remains

1 and have such remains prepared by embalming, cremation, or
2 otherwise, for burial or disposition, provided all laws pertaining
3 to public health in this state are complied with. First call does
4 not include calls made by ambulance, when the person dispatching the
5 ambulance does not know whether or not dead human remains are to be
6 picked up;

7 ~~8.~~ 6. "Personal supervision" means the physical presence of a
8 ~~licensed~~ funeral director, funeral services practitioner or embalmer
9 at the specified time and place of the providing of acts of funeral
10 service;

11 ~~9.~~ 7. "Commercial embalming establishment" means a fixed place
12 of business consisting of an equipped preparation room, and other
13 rooms as necessary, for the specified purpose of performing
14 preparation and shipping services of dead human remains to funeral
15 establishments inside and outside this state;

16 ~~10.~~ 8. "Funeral service merchandise or funeral services" means
17 those products and services normally provided by funeral
18 establishments and required to be listed on the General Price List
19 of the Federal Trade Commission, 15 U.S.C., Section 57a(a),
20 including, but not limited to, the sale of burial supplies and
21 equipment, but excluding the sale by a cemetery of lands or
22 interests therein, services incidental thereto, markers, memorials,
23 monuments, equipment, crypts, niches or outer enclosures;

1 ~~11.~~ 9. "Outer enclosure" means a grave liner, grave box, or
2 grave vault;

3 ~~12.~~ ~~"Funeral director in charge" means an individual licensed~~
4 ~~as both a funeral director and embalmer designated by a funeral~~
5 ~~service establishment, commercial embalming establishment, or~~
6 ~~crematory who is responsible for the legal and ethical operation of~~
7 ~~the establishment and is accountable to the Board;~~

8 ~~13.~~ 10. "Authorizing agent" means a person legally entitled to
9 order the cremation or final disposition of particular human remains
10 pursuant to Section 1151 or 1158 of Title 21 of the Oklahoma
11 Statutes; ~~and~~

12 ~~14.~~ 11. "Cremation" means the technical process, using heat and
13 flame, that reduces human remains to bone fragments. The reduction
14 takes place through heat and evaporation. Cremation shall include,
15 but not be limited to, the processing and pulverization of the bone
16 fragments; and

17 12. "Funeral services practitioner" means a person who:

18 a. is engaged in or conducts or represents themselves as
19 being engaged in preparing for the burial or disposal
20 of dead human remains,

21 b. is engaged in or conducts or represents themselves as
22 being engaged in maintaining a funeral establishment
23 for the preparation and the disposition, or for the
24 care of dead human remains,

- 1 c. uses, in connection with the name of the person or
2 funeral establishment, the words "funeral services
3 practitioner" implying that the person is engaged as a
4 funeral services practitioner, sells funeral service
5 merchandise to the public or is responsible for the
6 legal and ethical operation of a crematory, and
7 d. has completed two thousand five hundred (2,500) hours
8 practicing or interning as a funeral service
9 practitioner, has directed fifty (50) funerals or
10 graveside services and has embalmed one hundred (100)
11 human remains.

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

14 The following ~~persons, professions and~~ businesses shall be
15 required to be licensed pursuant to the Funeral Services Licensing
16 Act:

17 1. ~~Any person engaged or who may engage in:~~

18 a. ~~the practice or profession of funeral directing or~~
19 ~~embalming,~~

20 b. ~~maintaining~~ Maintaining the business of a funeral
21 establishment or commercial embalming establishment~~;~~i

22 c. ~~the~~

23 2. The sale of any funeral service merchandise~~;~~i or

24 d. ~~providing~~

1 3. Providing funeral services; and

2 ~~2- 4.~~ Any funeral establishment or commercial embalming
3 establishment.

4 SECTION 3. AMENDATORY 59 O.S. 2011, Section 396.4, as
5 amended by Section 1, Chapter 375, O.S.L. 2015 (59 O.S. Supp. 2017,
6 Section 396.4), is amended to read as follows:

7 Section 396.4 A. 1. The ~~Oklahoma Funeral Board~~ Secretary of
8 State shall set fees pursuant to rule for all licenses,
9 registrations, examinations and renewals required by the Funeral
10 Services Licensing Act.

11 2. Until the ~~Oklahoma Funeral Board~~ Secretary of State sets
12 fees pursuant to rule, the following shall be the fees charged for
13 the licenses, registrations, and examinations required by the
14 Funeral Services Licensing Act:

15	Funeral Director License or Renewal	\$75.00
16	Embalmer License or Renewal	\$75.00
17	Registration for Funeral Director/Embalmer Apprentice	\$150.00
18	Extension of Funeral Director/Embalmer Apprentice	\$150.00
19	Embalmer Examination	\$100.00
20	Funeral Director Examination	\$100.00
21	State Law Examination	\$100.00
22	Funeral Establishment License or Renewal	\$250.00
23	Commercial Embalming Establishment License or Renewal	\$250.00
24	Reciprocal License for Funeral Director or Embalmer	\$150.00

~~Change of Funeral Director in Charge~~ \$150.00

Crematory License or Renewal \$250.00

~~B. The Oklahoma Funeral Board shall assess Three Dollars (\$3.00) for each disposition performed by the licensed funeral establishment or commercial embalming establishment. The disposition fee shall be payable upon renewal of the license as provided in subsection E of this section and shall be calculated from November 1 of the preceding calendar year to October 31 of the current calendar year for each licensee. For purposes of this subsection, "disposition" means each time the licensed establishment files an original death certificate pursuant to Section 1-317 of Title 63 of the Oklahoma Statutes.~~

~~C. Fees for funeral director, embalmer, and state law examinations shall be paid prior to the scheduled examination. An examination fee shall not be refundable.~~

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

~~E.~~ C. If any renewal fee required by this section is not paid on or before December 31 of each year, the amount of the fee shall be doubled and if the fee is not paid on or before April 30 of the subsequent year, the establishment licensee shall be in default and the license shall terminate automatically.

1 ~~F. All examinations of the Oklahoma Funeral Board shall be~~
2 ~~exempt from the Oklahoma Open Records Act in order to maintain the~~
3 ~~integrity of the examination process. Copies of completed~~
4 ~~examinations shall only be released upon receipt of a court order~~
5 ~~from a court of competent jurisdiction.~~

6 SECTION 4. AMENDATORY 59 O.S. 2011, Section 396.5, is
7 amended to read as follows:

8 Section 396.5 All licenses issued by the ~~Board~~ Secretary of
9 State shall expire on the 31st day of December of each year. The
10 ~~Board~~ Secretary of State shall issue a renewal for such license
11 without further examination upon the payment of a renewal fee as
12 required by Section 396.4 of this title. ~~A funeral director or~~
13 ~~embalmer who fails to apply for a renewal license for a period of~~
14 ~~three (3) years or more, shall be reinstated by taking a written and~~
15 ~~oral examination, as required by the Board, and by paying a fee of~~
16 ~~Twenty-five Dollars (\$25.00) and the current years' dues.~~

17 SECTION 5. AMENDATORY 59 O.S. 2011, Section 396.12, is
18 amended to read as follows:

19 Section 396.12 A. Any place where a person shall hold forth by
20 word or act that the person is engaged in the profession of
21 undertaking or funeral directing shall be deemed as a funeral
22 establishment and shall be licensed as such pursuant to the
23 provisions of the Funeral Services Licensing Act.
24

1 B. A funeral establishment shall not do business in a location that
2 is not licensed as a funeral establishment, shall not advertise a
3 service that is available from an unlicensed location, and shall
4 advertise itself by the name that the establishment is licensed as
5 pursuant to the Funeral Services Licensing Act.

6 C. Every funeral establishment, commercial embalming
7 establishment, and crematory ~~shall be operated by a funeral director~~
8 ~~in charge. Each establishment license~~ license shall be
9 conspicuously displayed at the location.

10 D. ~~The Oklahoma Funeral Board~~ Oklahoma Department of Health
11 shall ~~have the power to~~ inspect the premises in which funeral
12 directing is conducted or where embalming or cremation is practiced
13 or where an applicant proposed to practice, ~~and the Board is hereby~~
14 ~~empowered to prescribe and endorse rules~~ for reasonable sanitation
15 of such establishments, including necessary drainage, ventilation,
16 and necessary and suitable instruments for the business or
17 profession of embalming and funeral directing. The funeral
18 establishment, crematory or commercial mortuary shall request an
19 inspection every three (3) years and submit the results with their
20 license renewal to the Secretary of State. Failure to submit the
21 Oklahoma Health Department inspection report may result in loss of
22 business license.

23 E. Any place where a person shall hold forth by word or act
24 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

1 licensed as such pursuant to the provisions of the Funeral Services
2 Licensing Act.

3 SECTION 6. AMENDATORY 59 O.S. 2011, Section 396.12a, is
4 amended to read as follows:

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

12 ~~B. No person shall act or represent themselves as a funeral~~
13 ~~director, embalmer, apprentice, provide funeral services or~~
14 ~~merchandise or operate a funeral establishment or a commercial~~
15 ~~embalming establishment without a current license or registration~~
16 ~~issued pursuant to the Funeral Services Licensing Act.~~

17 SECTION 7. AMENDATORY 59 O.S. 2011, Section 396.12b, as
18 amended by Section 3, Chapter 97, O.S.L. 2013 (59 O.S. Supp. 2017,
19 Section 396.12b), is amended to read as follows:

20 Section 396.12b. A. Each funeral conducted within this state
21 shall be under the personal supervision of a ~~duly licensed~~ funeral
22 director ~~who holds a valid license from the Oklahoma Funeral Board.~~
23 ~~A registered apprentice may assist in conducting funerals~~ or funeral
24 services practitioner. To conduct a funeral shall require the

1 personal supervision of a ~~licensed~~ funeral director or funeral
2 services practitioner from the time of the first call until
3 interment is completed. A funeral director or funeral services
4 practitioner conducting a funeral in this state shall ensure that
5 the casket or other container holding the deceased human remains
6 shall not incur any damage other than that which is normally
7 incurred in the burial or final disposition of human remains.

8 B. The embalming of dead human remains shall require the
9 presence and the direct supervision of ~~a duly licensed embalmer,~~
10 ~~however, a licensed registered apprentice embalmer may perform the~~
11 ~~embalming of a dead human provided said registered apprentice~~
12 ~~embalmer is under the direct supervision of a duly licensed an~~
13 embalmer or a funeral services practitioner.

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

20 D. Dead human remains shall be picked up on first call only
21 under the direction and supervision of a ~~licensed~~ funeral director,
22 funeral services practitioner, or embalmer. Dead human remains may
23 be picked up or transferred without the personal supervision of a
24 funeral director, funeral services practitioner, or embalmer;

1 provided however, any inadvertent contact with family members or
2 other persons shall be restricted to identifying the employer to the
3 person, arranging an appointment with the employer for any person
4 who indicates a desire to make funeral arrangements for the deceased
5 and making any disclosure to the person that is required by any
6 federal or state regulation. A funeral director, funeral services
7 practitioner, or embalmer who directs the removal or transfer of
8 dead human remains without providing personal supervision shall be
9 held strictly accountable for compliance with the requirements of
10 the Funeral Services Licensing Act.

11 SECTION 8. AMENDATORY 59 O.S. 2011, Section 396.12c, as
12 amended by Section 4, Chapter 97, O.S.L. 2013 (59 O.S. Supp. 2017,
13 Section 396.12c), is amended to read as follows:

14 Section 396.12c. After notice and hearing pursuant to Article
15 II of the Administrative Procedures Act, the ~~Oklahoma Funeral Board~~
16 Secretary of State may refuse to issue or renew, or may revoke or
17 suspend, any license or registration for any one or combination of
18 the following:

- 19 1. ~~Conviction of a felony shown by a certified copy of the~~
20 ~~record of the court of conviction;~~
- 21 2. Conviction of a misdemeanor involving funeral services;
- 22 3. ~~Gross malpractice or gross incompetency, which shall be~~
23 ~~determined by the Board;~~

1 ~~4. False or misleading advertising as a funeral director or~~
2 ~~embalmer;~~

3 ~~5.~~ 2. Violation of any of the provisions of the Funeral
4 Services Licensing Act or any violation of Sections 201 through 231
5 of Title 8 of the Oklahoma Statutes;

6 ~~6.~~ 3. Fraud or misrepresentation in obtaining a license;

7 ~~7.~~ 4. Using any casket or part thereof which has previously
8 been used as a receptacle for, or in connection with, the burial or
9 other disposition of dead human remains, unless the disclosure is
10 made to the purchaser;

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

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

16 ~~10.~~ 5. Solicitation of business, either personally or by an
17 agent, from a dying individual or the relatives of a dead or
18 individual with a terminal condition, as defined by the Oklahoma
19 Rights of the Terminally Ill or Persistently Unconscious Act, other
20 than through general advertising;

21 ~~11.~~ 6. Refusing to properly release a dead human body to the
22 custody of the person entitled to custody;

1 ~~12.~~ 7. Violating applicable state laws relating to the failure
2 to file a death certificate, cremation permit, or prearrangement or
3 prefinancing of a funeral;

4 ~~13.~~ 8. Failing to obtain other necessary permits as required by
5 law in a timely manner;

6 ~~14.~~ 9. Failing to comply with the Funeral Rules of the Federal
7 Trade Commission, 15 U.S.C., Section 57a(a);

8 ~~15.~~ 10. Failing to comply with any applicable provisions of the
9 Funeral Services Licensing Act at the time of issuance or renewal;

10 ~~16.~~ 11. Improper issuance or renewal of a license or
11 registration;

12 ~~17.~~ 12. Violating the provisions of subsection B of Section
13 396.12 of this title regarding advertisement of services at
14 locations not licensed by the ~~Board~~ Secretary of State;

15 ~~18.~~ 13. The abuse of a corpse whereby a person knowingly and
16 willfully signs a certificate as having embalmed, cremated, or
17 prepared a dead human body for disposition when, in fact, the
18 services were not performed as indicated;

19 ~~19.~~ 14. Simultaneous cremating of more than one human dead body
20 without express written approval of the authorizing agent;

21 ~~20.~~ 15. Cremating human remains without the permit required by
22 Section 1-329.1 of Title 63 of the Oklahoma Statutes; or

1 ~~21.~~ 16. Intentional interference with an investigation ~~by the~~
2 ~~Board~~ 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 9. AMENDATORY 59 O.S. 2011, Section 396.12d, is
7 amended to read as follows:

8 Section 396.12d Any person who violates any of the provisions
9 of the Funeral Services Licensing Act ~~or rule or regulation~~
10 ~~promulgated~~ or order issued pursuant thereto, after notice and
11 hearing pursuant to Article II of the Administrative Procedures Act,
12 shall be subject to any of the following penalties and liabilities
13 authorized by the Funeral Services Licensing Act:

- 14 1. License ~~or certificate of apprenticeship~~ revocation, denial,
15 suspension or nonrenewal;
16 2. Administrative fines;
17 3. Injunctive proceedings; and
18 4. Other disciplinary action.

19 Further, such person shall be subject to criminal penalties
20 pursuant to the provisions of Section 396.24 of Title 59 of the
21 Oklahoma Statutes.

22 SECTION 10. AMENDATORY 59 O.S. 2011, Section 396.12e, is
23 amended to read as follows:

1 Section 396.12e A. Any ~~person or~~ entity who has been
2 determined ~~by the Oklahoma Funeral Board~~ to have violated any
3 provision of the Funeral Services Licensing Act or any rule or order
4 issued pursuant thereto may be liable for an administrative penalty.
5 ~~The maximum administrative penalty shall not exceed Ten Thousand~~
6 ~~Dollars (\$10,000.00) for any related series of violations.~~

7 ~~B. The Board shall be authorized, at its discretion, to take~~
8 ~~action as the nature of the violation requires. The Board shall~~
9 ~~have the authority to impose on the licensee, or certificate holder,~~
10 ~~as a condition of any adverse disciplinary action, the payment of~~
11 ~~costs expended by the Board in investigating and prosecuting the~~
12 ~~violation. The costs may include but are not limited to staff time,~~
13 ~~salary and travel expenses, witness fees and attorney fees, and~~
14 ~~shall be considered part of the order of the Board.~~

15 ~~C. The amount of the penalty shall be assessed by the Board~~
16 ~~pursuant to the provisions of subsection A of this section, after~~
17 ~~notice and hearing. In determining the amount of the penalty, the~~
18 ~~Board shall include, but not be limited to, consideration of the~~
19 ~~nature, circumstances and gravity of the violation and, with respect~~
20 ~~to the person or entity found to have committed the violation, the~~
21 ~~degree of culpability, the effect on ability of the person or entity~~
22 ~~to continue to do business and any show of good faith in attempting~~
23 ~~to achieve compliance with the provisions of the Funeral Services~~
24 ~~Licensing Act. The Board shall make a report of any action to any~~

1 ~~entity deemed appropriate for transmittal of the public record but~~
2 ~~shall in no cause be held liable for the content of the reported~~
3 ~~action or be made a party to any civil liability action taken as a~~
4 ~~result of the discipline imposed by the Board. All monies collected~~
5 ~~from the administrative penalties shall be deposited with the State~~
6 ~~Treasurer and by the State Treasurer placed in the "Fund of the~~
7 ~~Oklahoma Funeral Board", created pursuant to Section 17 of this act.~~

8 ~~D. Any license or certificate of apprenticeship holder may~~
9 ~~elect to surrender the license or certificate of apprenticeship of~~
10 ~~the person in lieu of said penalty but shall be forever barred from~~
11 ~~obtaining a reissuance of said license or certificate of~~
12 ~~apprenticeship.~~

13 SECTION 11. AMENDATORY 59 O.S. 2011, Section 396.12f, is
14 amended to read as follows:

15 Section 396.12f A. Complaints against any person or business
16 entity for alleged violations of the Funeral Services Licensing Act
17 ~~or of any of the rules issued pursuant thereto~~ shall be in writing,
18 signed by the complainant and filed with the ~~executive director of~~
19 ~~the Oklahoma Funeral Board. In addition to the general public, any~~
20 ~~member or employee of the Board, or the executive director of the~~
21 ~~Oklahoma Funeral Board, may sign a complaint for any violation of~~
22 ~~which the executive director has knowledge~~ Consumer Protection
23 Division of the Office of the Attorney General. All complaints
24 shall name the person complained of, and shall state the time and

1 place of the alleged violations and the facts of which the
2 complainant has knowledge. Upon receiving a complaint, the ~~Board~~
3 Attorney General shall examine the complaint, and determine whether
4 there is a reasonable cause to believe the charges to be true.

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

17 ~~C. The Board shall afford the alleged violator an opportunity~~
18 ~~for a fair hearing in accordance with the provisions of subsection F~~
19 ~~of this section not less than fifteen (15) days after receipt of the~~
20 ~~notice provided for in subsection B of this section. On the basis~~
21 ~~of the evidence produced at the hearing, the Board shall make~~
22 ~~findings of fact and conclusions of law and enter an order thereon.~~
23 ~~The Board shall give written notice of the order to the alleged~~
24 ~~violator and to any other persons who appeared at the hearing and~~

1 ~~made written request for notice of the order. If the hearing is~~
2 ~~held before a hearing officer as provided for in subsection F of~~
3 ~~this section, the hearing officer shall transmit the record of the~~
4 ~~hearing together with recommendations for findings of fact and~~
5 ~~conclusions of law to the Board which shall thereupon enter its~~
6 ~~order. The Board may enter its order on the basis of such record~~
7 ~~or, before issuing its order, require additional hearings or further~~
8 ~~evidence to be presented. The order of the Board shall become final~~
9 ~~and binding on all parties unless appealed to the district court~~
10 ~~pursuant to Article II of the Administrative Procedures Act, within~~
11 ~~thirty (30) days after notice has been sent to the parties.~~

12 ~~D. Whenever the Board finds that as a result of a violation of~~
13 ~~the Funeral Services Licensing Act or any rule promulgated thereto~~
14 ~~an emergency exists requiring immediate action to protect the public~~
15 ~~health or welfare, the Board may without notice or hearing issue an~~
16 ~~order stating the existence of an emergency and requiring that~~
17 ~~action be taken as it deems necessary to meet the emergency. The~~
18 ~~order shall be effective immediately. Any person to whom an order~~
19 ~~is directed shall comply with the order immediately but on~~
20 ~~application to the Board shall be afforded a hearing within ten (10)~~
21 ~~days of receipt of the notice. On the basis of a hearing, the Board~~
22 ~~shall continue the order in effect, revoke it or modify it. Any~~
23 ~~person aggrieved by an order continued after the hearing provided~~
24 ~~for in this subsection may appeal to the district court of the~~

1 ~~county in which the person resides, or in which the business of the~~
2 ~~person is located, within thirty (30) days of the Board's action.~~
3 ~~The appeal when docketed shall have priority over all cases pending~~
4 ~~on the docket, except criminal cases.~~

5 ~~E. Except as otherwise expressly provided by law, any notice,~~
6 ~~order or other instrument issued by or pursuant to authority of the~~
7 ~~Board may be served on any person affected thereby personally, by~~
8 ~~publication or by mailing a copy of the notice, order or other~~
9 ~~instrument by registered mail directed to the person affected at his~~
10 ~~last-known post office address as shown by the files or records of~~
11 ~~the Board. Proof of service shall be made as in the case of service~~
12 ~~of a summons or by publication in a civil action or may be made by~~
13 ~~the affidavit of the person who did the mailing. Proof of service~~
14 ~~shall be filed in the office of the Board.~~

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

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

1 ~~G. All records on complaints filed against any licensee~~
2 ~~pursuant to the Funeral Services Licensing Act shall be exempt from~~
3 ~~the Oklahoma Open Records Act unless the Board gave written notice~~
4 ~~of the complaint pursuant to subsection B of this section.~~

5 SECTION 12. AMENDATORY 59 O.S. 2011, Section 396.28, is
6 amended to read as follows:

7 Section 396.28 In case of a catastrophe as declared by the
8 ~~executive director of the Board~~ Governor, funeral directors and
9 embalmers from other states may be allowed to practice in this
10 state. ~~A temporary permit may be issued to those persons, and the~~
11 ~~permit shall allow the persons to practice for a length of time as~~
12 ~~determined by the Board.~~

13 SECTION 13. AMENDATORY 59 O.S. 2011, Section 396.29, is
14 amended to read as follows:

15 Section 396.29 A. The person charged by law with the duty of
16 burying the body of a deceased person may discharge such duty by
17 causing the body to be cremated as authorized and provided for in
18 the following sections of this article, but the body of a deceased
19 person shall not be disposed of by cremation, or other similar
20 means, within the State of Oklahoma, except in a crematory duly
21 licensed as provided for herein, and then only under a special
22 permit for cremation issued in accordance with the provisions
23 hereof.
24

1 B. Upon the completion of each cremation, and insofar as is
2 practicable, all of the recoverable residue of the cremation process
3 shall be removed from the crematory and placed in a separate
4 container so that the residue may not be commingled with the
5 cremated remains of other persons. Cremated remains of a dead human
6 shall not be divided or separated without the prior written consent
7 of the authorizing agent.

8 C. A funeral director, funeral services practitioner or funeral
9 establishment that has received express written authorization for
10 final disposition or cremation from the authorizing agent shall not
11 be liable if the final disposition or cremation is performed in
12 accordance with the provisions of the Funeral Services Licensing
13 Act. The funeral director or funeral establishment shall not be
14 liable for following in a reasonable fashion the instructions of any
15 persons who falsely represent themselves as the proper authorizing
16 agents.

17 D. Absent the receipt of a court order or other suitable
18 confirmation of resolution, a funeral director, funeral services
19 practitioner or funeral establishment shall not be liable for
20 refusing to accept human remains for final disposition or cremation
21 if the funeral director or other agent of the funeral establishment:

22 1. Is aware of any dispute concerning the final disposition or
23 cremation of the human remains; or
24

1 2. Has a reasonable basis for questioning any of the
2 representations made by the authorizing agent.

3 E. Each funeral establishment which offers or performs
4 cremations shall maintain an identification system that ensures the
5 ability of the funeral establishment to identify the human remains
6 in its possession throughout all phases of the cremation process.
7 Upon completion of the cremation process, the crematory operator
8 shall attest to the identity of the cremated remains and the date,
9 time, and place the cremation process occurred ~~on a form prescribed~~
10 ~~by rule of the Oklahoma Funeral Board~~. The form shall accompany the
11 human remains in all phases of transportation, cremation, and return
12 of the cremated remains.

13 F. The authorizing agent is responsible for the disposition of
14 the cremated remains. If, after sixty (60) calendar days from the
15 date of cremation, the authorizing agent or the representative of
16 the agent has not specified the ultimate disposition or claimed the
17 cremated remains, the funeral establishment in possession of the
18 cremated remains may dispose of the cremated remains in a dignified
19 and humane manner in accordance with any state, county, or municipal
20 laws or provisions regarding the disposition of cremated remains,
21 except as provided in subsection G of this section. A record of
22 this disposition shall be made and kept by the entity making the
23 disposition. Upon the disposition of unclaimed cremated remains in
24 accordance with this subsection, the funeral establishment and

1 entity which disposed the cremated remains shall be discharged from
2 any legal obligation or liability concerning the disposition of the
3 cremated remains.

4 G. If the authorizing agent determines that the unclaimed
5 cremated remains are those of a military veteran, the funeral
6 establishment may transfer the remains to a charitable organization
7 approved by the Military Department of the State of Oklahoma for the
8 purpose of providing a dignified and honorable funeral for the
9 veteran at a veterans cemetery. The charitable organization shall
10 be listed as an exempt organization under Section 501(c) of the
11 Internal Revenue Code, 26 U.S.C., Section 501(c). Upon the transfer
12 of the veteran's remains to the charitable organization, the funeral
13 establishment shall be discharged from any legal obligation or
14 liability concerning the disposition of the cremated remains.

15 SECTION 14. AMENDATORY 59 O.S. 2011, Section 396.30, as
16 amended by Section 5, Chapter 97, O.S.L. 2013 (59 O.S. Supp. 2017,
17 Section 396.30), is amended to read as follows:

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

22 B. Application for an annual license shall be made to the
23 ~~executive director of the Board~~ Secretary of State upon forms
24 prescribed and furnished by the ~~executive director~~ Secretary of

1 State, shall give the location of the crematory, and any other
2 information as the ~~executive director~~ Secretary of State shall
3 require, and shall be accompanied by the crematory license fee
4 pursuant to Section 396.4 of this title. A crematory shall not be
5 licensed separately from a funeral or commercial embalming
6 establishment but shall be licensed in conjunction with and operated
7 by a funeral service or commercial embalming establishment. Annual
8 licenses shall expire on December 31 each year, shall specify the
9 name or names of the owners of the crematory and the location
10 thereof, ~~the funeral director in charge~~, and shall not be
11 transferable either as to the ownership of the crematory, the
12 ~~funeral director in charge~~ Secretary of State or as to the location
13 thereof. The first annual license issued for any crematory at any
14 location shall not be issued by the ~~executive director~~ Secretary of
15 State until the ~~executive director~~ following ~~has~~ have been
16 satisfied:

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

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

23

24

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

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

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

13 ~~E.~~ D. A funeral establishment performing cremation services
14 shall be subject to all local, state, and federal health and
15 environmental requirements and shall obtain all necessary licenses
16 and permits from the ~~Oklahoma Funeral Board,~~ and Secretary of State
17 the appropriate federal and state health and environmental
18 authorities.

19 ~~F.~~ E. Crematories licensed by the ~~Board~~ state on the effective
20 date of this act shall be exempt from the provisions of subsections
21 ~~C, and D and E~~ of this section.

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

1 SECTION 15. REPEALER 59 O.S. 2011, Sections 396, as
2 amended by Section 1, Chapter 61, O.S.L. 2014, 396.1, 396.1A,
3 396.1B, 396.1C, as amended by Section 264, Chapter 304, O.S.L. 2012,
4 396.2a, as amended by Section 1, Chapter 204, O.S.L. 2017, 396.3, as
5 last amended by Section 2, Chapter 204, O.S.L. 2017, 396.5a, 396.5b,
6 396.6, 396.8, 396.10, 396.11, 396.16, 396.17, 396.22 and 396.31 (59
7 O.S. Supp. 2017, Sections 396, 396.1C, 396.2a and 396.3), are hereby
8 repealed.

9 SECTION 16. This act shall become effective November 1, 2018.

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