

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 1742

By: Dills

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5  
6 AS INTRODUCED

7 An Act relating to professions and occupations;  
8 amending 59 O.S. 2011, Section 396.2, as amended by  
9 Section 1, Chapter 97, O.S.L. 2013, 396.5 and 396.12f  
10 (59 O.S. Supp. 2020, Section 396.2), which relates to  
11 the Funeral Services Licensing Act; modifying and  
12 adding definitions; modifying fee; making certain  
13 information confidential; prohibiting subpoena and  
14 discovery of certain information; and providing an  
15 effective date.

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

17 SECTION 1. AMENDATORY 59 O.S. 2011, Section 396.2, as  
18 amended by Section 1, Chapter 97, O.S.L. 2013 (59 O.S. Supp. 2020,  
19 Section 396.2), is amended to read as follows:

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

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

1 duly licensed embalmer or a duly licensed funeral director of and in  
2 the State of Oklahoma, pursuant to the provisions of the Funeral  
3 Services Licensing Act, and who is duly registered as such with said  
4 Board;

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

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

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

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

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

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

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

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

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

22 14. "Cremation" means the technical process, using heat and  
23 flame, or heat and pressure, that reduces human remains to essential  
24 elements, including bone fragments. The reduction takes place

1 through heat and evaporation. Cremation shall include, but not be  
2 limited to, the processing and pulverization of the bone fragments,  
3 or through alkaline hydrolysis;

4 15. "Crematory" means a structure containing a furnace or  
5 alkaline hydrolysis vessel used or intended to be used for the  
6 cremation of human remains. The term includes a facility that  
7 cremates human remains through alkaline hydrolysis; and

8 16. "Alkaline hydrolysis" means the reduction of human remains  
9 to bone fragments and essential elements in a licensed crematory  
10 using heat, pressure, water and base chemical agents.

11 SECTION 2. AMENDATORY 59 O.S. 2011, Section 396.5, is  
12 amended to read as follows:

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

22 SECTION 3. AMENDATORY 59 O.S. 2011, Section 396.12f, is  
23 amended to read as follows:

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1 Section 396.12f A. Complaints against any person for alleged  
2 violations of the Funeral Services Licensing Act or of any of the  
3 rules issued pursuant thereto shall be in writing, signed by the  
4 complainant and filed with the executive director of the Oklahoma  
5 Funeral Board. In addition to the general public, any member or  
6 employee of the Board, or the executive director of the Oklahoma  
7 Funeral Board, may sign a complaint for any violation of which the  
8 executive director has knowledge. All complaints shall name the  
9 person complained of, and shall state the time and place of the  
10 alleged violations and the facts of which the complainant has  
11 knowledge. Upon receiving a complaint, the Board shall examine the  
12 complaint, and determine whether there is a reasonable cause to  
13 believe the charges to be true.

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

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1 C. The Board shall afford the alleged violator an opportunity  
2 for a fair hearing in accordance with the provisions of subsection F  
3 of this section not less than fifteen (15) days after receipt of the  
4 notice provided for in subsection B of this section. On the basis  
5 of the evidence produced at the hearing, the Board shall make  
6 findings of fact and conclusions of law and enter an order thereon.  
7 The Board shall give written notice of the order to the alleged  
8 violator and to any other persons who appeared at the hearing and  
9 made written request for notice of the order. If the hearing is  
10 held before a hearing officer as provided for in subsection F of  
11 this section, the hearing officer shall transmit the record of the  
12 hearing together with recommendations for findings of fact and  
13 conclusions of law to the Board which shall thereupon enter its  
14 order. The Board may enter its order on the basis of such record  
15 or, before issuing its order, require additional hearings or further  
16 evidence to be presented. The order of the Board shall become final  
17 and binding on all parties unless appealed to the district court  
18 pursuant to Article II of the Administrative Procedures Act, within  
19 thirty (30) days after notice has been sent to the parties.

20 D. Whenever the Board finds that as a result of a violation of  
21 the Funeral Services Licensing Act or any rule promulgated thereto  
22 an emergency exists requiring immediate action to protect the public  
23 health or welfare, the Board may without notice or hearing issue an  
24 order stating the existence of an emergency and requiring that

1 action be taken as it deems necessary to meet the emergency. The  
2 order shall be effective immediately. Any person to whom an order  
3 is directed shall comply with the order immediately but on  
4 application to the Board shall be afforded a hearing within ten (10)  
5 days of receipt of the notice. On the basis of a hearing, the Board  
6 shall continue the order in effect, revoke it or modify it. Any  
7 person aggrieved by an order continued after the hearing provided  
8 for in this subsection may appeal to the district court of the  
9 county in which the person resides, or in which the business of the  
10 person is located, within thirty (30) days of the Board's action.  
11 The appeal when docketed shall have priority over all cases pending  
12 on the docket, except criminal cases.

13 E. Except as otherwise expressly provided by law, any notice,  
14 order or other instrument issued by or pursuant to authority of the  
15 Board may be served on any person affected thereby personally, by  
16 publication or by mailing a copy of the notice, order or other  
17 instrument by registered mail directed to the person affected at his  
18 last-known post office address as shown by the files or records of  
19 the Board. Proof of service shall be made as in the case of service  
20 of a summons or by publication in a civil action or may be made by  
21 the affidavit of the person who did the mailing. Proof of service  
22 shall be filed in the office of the Board.

23 Every certificate or affidavit of service made and filed as  
24 provided for in this subsection shall be prima facie evidence of the



1 facts therein stated. A certified copy thereof shall have like  
2 force and effect.

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

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

13 1. The Board, its employees, appointed Board members,  
14 independent contractors of other agents of the Board shall keep  
15 confidential the complaint and information obtained during an  
16 investigation into violations of the Oklahoma Funeral Services  
17 Licensing Act; provided, however, such information may be introduced  
18 by the state in administrative proceedings before the Board and the  
19 information then becomes public record.

20 2. The complaint and information obtained during the  
21 investigation but not introduced in administrative proceedings shall  
22 not be subject to subpoena or discovery in any civil or criminal  
23 proceedings, except that the Board may give such information to law  
24 enforcement and other state agencies as necessary and appropriate in

1 the discharge of the duties of that agency and only under  
2 circumstances that ensure against unauthorized access to the  
3 information.

4 SECTION 4. This act shall become effective November 1, 2021.

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6 58-1-6127 LRB 12/16/20  
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