Short Title: Professions and occupations; modifying various provisions of the Funeral Services Licensing Act; effective date.

Report Title: Professions and occupations; modifying Funeral Services Licensing Act

STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

HOUSE BILL NO. 2905 By: Morgan

AS INTRODUCED

An Act relating to professions and occupations; amending 59 O.S. 2011, Sections 396.2a, 396.3, 396.4, 396.5b, 396.10, 396.11, 396.12b, 396.12c and 396.30, which relate to the Funeral Services Licensing Act; modifying duties of the Oklahoma Funeral Board; authorizing approval of course providers and curriculum for mortuary assistants; providing alternative qualifications; establishing qualifications for mortuary assistant; directing Board to examine certain applicants; defining term; stating minimal qualifications; requiring payment of certain fees; setting minimal examination score; making certificate expire on certain date; providing for renewal, continuing education and compliance with law; adding fee for mortuary assistant; modifying date for double fee; requiring continuing education for certain certificate holder; providing for application of license for mortuary assistant; providing for mortuary assistant apprentice; authorizing mortuary assistant to pick up or transfer human remains; modifying grounds to issue, renew, revoke or suspend license or registration; prohibiting crematory license without funeral or embalming establishment license; providing for codification; and providing an effective date.

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

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

Section 396.2a In addition to any other powers and duties imposed by law, the Oklahoma Funeral Board 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 <u>and mortuary assistants</u>;

5. Issue licenses for funeral directors, embalmers, funeral establishments, commercial embalming establishments, and crematories;

6. Issue certificates of apprenticeship <u>and certificates for mortuary assistants</u>;

7. Upon good cause shown, as hereinafter provided, deny the issuance of a license or certificate of apprenticeship <u>or mortuary assistant</u> or suspend, revoke or refuse to renew licenses or

certificates of apprenticeship or mortuary assistant, 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;

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;

17. Take such other action as may be reasonably necessary or appropriate to effectuate the Funeral Services Licensing Act;

18. Promulgate rules, issue licenses, and regulate crematories pursuant to the Funeral Services Licensing Act;

19. Issue temporary licenses to a funeral establishment when its facilities are destroyed or damaged in order that the funeral establishment can continue to operate. During the effective period of the temporary license, the Board may waive certain licensing requirements if the funeral establishment is making a good faith effort to rebuild or restore its operations in order to meet all licensing requirements; ~~and~~

20. Promulgate rules for continuing education for licensees pursuant to Section ~~8~~ 396.5b of this ~~act~~ title; and

21. Approve course providers and course curriculum for certification of mortuary assistants in funeral services.

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~~ Except as provided in subsection C of this section, the minimum requirements for a license to practice funeral directing or embalming, or both, are as follows:

1. 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~~.~~; and

2. 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. If a person cannot meet the qualifications in subsection B of this section for a funeral director, the person may alternatively qualify for a license to practice funeral directing upon meeting the eligibility requirements of this subsection as follows:

An applicant shall be at least eighteen (18) years of age, a legal resident of this state, a citizen or permanent resident of the United States, and of good moral character. The applicant shall be a graduate of a funeral director course approved by the Oklahoma Funeral Board. The funeral director course of study shall include at least thirty (30) semester hours or equivalent and be administered by a program of mortuary science accredited by a nationally recognized funeral-service-education-accrediting entity. The applicant shall complete a twelve-month minimum term as a registered apprentice with full-time employment at a licensed establishment and shall have assisted with twenty-five separate funeral or memorial services under the supervision of a licensed funeral director in this state. An applicant shall pay all fees as provided in Section 396.4 of this title and pass the funeral director examination acquired, if available, from a nationally recognized testing entity with a score of seventy-five percent (75%) or greater. A license to practice as a funeral director issued

pursuant to this subsection shall be restricted to funeral director, and the licensee shall not be eligible to practice as the funeral director in charge as defined in Section 396.2 of this title.

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

F. 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 service establishment with a funeral director in charge that does not have current dual funeral-director-and-embalmer-licenses has until January 1, 2014, to comply with the requirements of this section.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 396.3b of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Funeral Board shall determine the qualifications necessary to enable any person to practice as a mortuary assistant or mortuary assistant apprentice, and prescribe the requirements for a funeral establishment to employ mortuary

assistants and apprentice mortuary assistants. The Board shall examine all applicants for mortuary assistant certification or apprenticeships. The Board shall issue the proper certification to applicants who successfully pass such examination and qualify pursuant to any additional requirements the Board may prescribe. For purposes of the Funeral Services Licensing Act, “mortuary assistant” means a person who under the supervision of a licensed funeral director engages in or conducts or supervises interment after the conclusion of a graveside ceremony, who assists in first-call human-remains pickups and transfers, and who may assist in other funeral services as established by the Board and directed and supervised by the funeral director or funeral director in charge.

B. 1. The minimum requirement for a mortuary assistant certification shall be as follows: The applicant shall be at least seventeen (17) years of age, a legal resident of this state, a citizen or permanent resident of the United States, and of good moral character. An applicant shall be a graduate of an accredited high school or have earned a Graduate Equivalency Degree (G.E.D.) credential. An applicant shall complete a class of specified instruction on funeral service that is approved by the Board. An applicant shall complete a minimum of twelve (12) months in an apprenticeship as an apprentice mortuary assistant with full-time employment at a licensed establishment and in such position shall have assisted in at least twenty-five removals and twenty-five

interments under the direct supervision of a licensed funeral director.

2. An applicant shall pay the fees required in Section 396.4 of Title 59 of the Oklahoma Statutes and shall pass an examination approved by the Board with a score of not less than seventy-five percent (75%), in addition to the requirement of paragraph 1 of this subsection.

3. The mortuary assistant certificate shall expire December 31 and may be renewed by paying the required renewal fees; completing the required hours of continuing education for renewal as set by rule pursuant to Section 396.5b of Title 59 of the Oklahoma Statutes, including one (1) hour covering the topic of ethics; and being in compliance with the provisions of Section 396.12c of Title 59 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 59 O.S. 2011, Section 396.4, is amended to read as follows:

Section 396.4 A. Until the Oklahoma Funeral Board sets fees pursuant to subsection B of this section, the following shall be the fees charged for the licenses, registrations, and examinations required by the Funeral Services Licensing Act:

Funeral Director License or Renewal	$75.00
Embalmer License or Renewal	$75.00
Registration for Funeral Director/Embalmer Apprentice	$150.00
Extension of Funeral Director/Embalmer Apprentice	$150.00

Mortuary Assistant	$150.00
Embalmer Examination	$100.00
Funeral Director Examination	$100.00
State Law Examination	$100.00
Funeral Establishment License or Renewal	$250.00
Commercial Embalming Establishment License or Renewal	$250.00
Reciprocal License for Funeral Director or Embalmer	$150.00
Change of Funeral Director in Charge	$150.00
Crematory License	$250.00

B. The ~~Oklahoma Funeral~~ Board shall set the fees by rule for those activities listed in subsection A of this section.

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

D. The ~~Oklahoma Funeral~~ Board 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. 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~~ January 30 of the subsequent year, the licensee or certificate holder shall be in default and the license or certificate shall terminate automatically.

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

SECTION 5. AMENDATORY 59 O.S. 2011, Section 396.5b, is amended to read as follows:

Section 396.5b A. Beginning July 1, 2006, as a condition of renewal or reactivation of a license <u>or certification</u>, each licensee <u>or certificate holder</u> shall submit to the Oklahoma Funeral Board evidence of the completion of clock hours of continuing education courses approved by the Board within the twelve (12) months immediately preceding the term for which the license <u>or certification</u> is issued. The number of hours, or its equivalent, required for each licensed <u>or certificate</u> term shall be determined by the Board and promulgated by rule. Each licensee <u>or certificate holder</u> shall be required to complete and include as part of the continuing education provision a certain number of required subjects as provided by rule.

B. The continuing education courses required by this section shall be satisfied by courses approved by the Board or the Academy of Professional Funeral Service Practice.

C. The Board shall maintain a listing of courses approved by the Board.

D. The Board shall not issue an active renewal license or certificate or reactivate a license or certificate unless the continuing education requirement set forth in this section is satisfied within the prescribed time period.

E. The provisions of this section shall not apply:

1. During the period a licensee or certificate holder is on inactive status;

2. To a nonresident licensee licensed in this state if the licensee is not engaged in funeral service or embalming practice in Oklahoma; and

3. To classes of licensees exempted by rules of the Board.

SECTION 6. AMENDATORY 59 O.S. 2011, Section 396.10, is amended to read as follows:

Section 396.10 Any person desiring to engage in the profession or business of embalming or funeral directing or both~~, as defined herein,~~ or as a mortuary assistant shall make application, be required to show all preliminary requisites, comply with the rules of the Oklahoma Funeral Board, and take all examinations as shall be deemed necessary by the Board in its rules. The Board shall publish in its rules the subject to be covered in the examination and the standards to be attained thereon. Changes in the rules shall be published pursuant to the Administrative Procedures Act.

SECTION 7. AMENDATORY 59 O.S. 2011, Section 396.11, is amended to read as follows:

Section 396.11 A. The term for an apprenticeship in embalming ~~and the term for an apprenticeship in~~, funeral directing, or mortuary assistant may be served concurrently. Applications for an apprenticeship in funeral directing ~~or~~, embalming, or mortuary assistant shall be made to the Oklahoma Funeral Board in writing on a form and in a manner prescribed by the Board. The Board shall issue a certificate of apprenticeship to any person applying for ~~said certificate~~ certification as an apprentice in embalming, funeral directing, or mortuary assistant who submits to the Board satisfactory evidence that ~~said person~~ he or she is seventeen (17) years of age or older, of good moral character, and a graduate of an accredited high school or has earned a G.E.D. credential. The application shall be accompanied by a registration fee as required by Section 396.4 of this title.

B. The Board shall prescribe and enforce such rules as necessary to qualify apprentice applicants as embalmers ~~or~~, funeral directors, or mortuary assistants. A license to practice embalming or funeral directing shall not be issued until ~~said~~ the applicant has complied with the rules of the Board, and ~~said~~ the applicant has embalmed at least twenty-five dead human bodies for burial or shipment during apprenticeship.

C. The certificate of apprenticeship shall expire one (1) year from the date of issuance but may be renewed by the Board for four additional one-year periods.

SECTION 8. 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 or certified mortuary assistant 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 shall be required, except as provided in subsection D of this section for embalmers or certified mortuary assistants to pick up or transfer dead human remains. 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~~ the 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 or a certified mortuary assistant. 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 or mortuary assistant. Dead human remains may be picked up or transferred by a currently registered apprentice or mortuary assistant 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 or mortuary assistant 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 9. 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 or plea of guilty or nolo contendere to a felony ~~shown by a certified copy of the record of the court of conviction~~ offense;

2. Conviction of or plea of guilty or nolo contendere to 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~~ the Burial Association Act;

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;

22. Nonpayment of taxes to the Oklahoma Tax Commission pursuant to Section 238.1 of Title 68 of the Oklahoma Statutes; or

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

SECTION 10. 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. Annual licenses shall expire on the 31st day of December 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~~ <u>or before April 10, 2003,</u> 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 11. This act shall become effective November 1, 2012.

53-2-8757 LRB 12/28/11