

SENATE Substitute for HOUSE BILL No. 2310

AN ACT concerning the state board of mortuary arts, relating to crematory operations; licensure; fees; amending K.S.A. 65-1760, 65-1763, 65-1764, 65-1765, 65-1766 and 65-1768 and K.S.A. 2009 Supp. 65-1727 and 65-1762 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. On and after July 1, 2011, a crematory operator shall, in connection with such person's licensed crematory, use the words "crematory operator" or any other title implying that such person is engaged in the business of cremation.

New Sec. 2. On and after July 1, 2011, every cremation conducted in this state shall be under the personal supervision of a licensed crematory operator or crematory operator in charge with all cremations performed at a licensed crematory.

New Sec. 3. (a) On and after July 1, 2011, it shall be unlawful for any person to engage in or attempt to engage in the business of a crematory operator in this state without a crematory operator's license issued by the state board of mortuary arts.

(b) On and after July 1, 2011, every person desiring to enter the practice of a crematory operator shall make written application to the board on forms as prescribed by the board. The application shall show that the applicant is of legal age, has successfully completed training in performing cremation services and received certification by an organization whose program with a minimum of six hours has been approved by the board within twelve months of the board's approval of application. If the applicant has not received such training when applying to the board, they must have received training from another person who has already received such training. That training must also be a minimum of six hours with the trainer and program approved by the board. At the end of one year of licensure as a crematory operator if the individual has not received training from an organization of an approved program as previously described, the crematory operator's license will be automatically suspended until such time as approved training has been completed.

New Sec. 4. (a) The renewal fee for a crematory operator's license shall be in the amount fixed by the state board of mortuary arts in accordance with the provisions of K.S.A. 2009 Supp. 65-1727, and amendments thereto. The fee shall be due and payable to the secretary of the board prior to the expiration date of the license. The secretary of the board shall mail a notice of the expiration date of each license and of the renewal fee at least 30 days prior to the date of expiration to the last known address of each licensee. If the licensee fails to pay such renewal fee within the time specified, the license shall automatically lapse, and the licensee shall be denied the right to practice cremation in this state during such lapse.

(b) The board may reinstate such lapsed license upon the payment of the fee in arrears, plus an additional reinstatement fee in the amount equal to the renewal fee, if such lapse is not over six months in duration.

(c) Any person who fails to reinstate a lapsed license within six months after the lapse of such license may apply for relicensure by making application on a form provided by the board. Relicensure shall be granted upon receipt of proof that the applicant meets qualifications to act as a licensed crematory operator, has satisfied all of the requirements for renewal established by law and has paid the board back renewal fees as established by the board by rules and regulations.

(d) The expiration date of each license shall be established by rules and regulations of the board. Subject to the provisions of this subsection, each license shall be renewed on a biennial basis upon the filing of a renewal application prior to the expiration date of the license and upon payment of the renewal fee established pursuant to K.S.A. 2009 Supp. 65-1727, and amendments thereto. To provide for a system of biennial renewal of licenses, the board may provide by rules and regulations that licenses issued or renewed for the first time after the effective date of this act may expire less than two years from the date of issuance or renewal. In each case in which a license is issued or renewed for a period of time of less than two years, the board shall prorate to the nearest whole month the license or renewal fee established pursuant to K.S.A. 2009 Supp. 65-1727, and amendments thereto.

(e) Every licensed crematory operator in Kansas shall submit with the renewal application and renewal fee evidence of satisfactory comple-

tion of a program of continuing education required and approved by the board. The board by duly adopted rules and regulations shall establish the requirements for such program of continuing education.

(f) This section shall take effect on and after July 1, 2011.

New Sec. 5. (a) Any intent of the crematory to recycle metallic remnants, prosthetic implants or anything else remaining after cremation or removed prior to cremation requires consent from the legal next of kin of the deceased as defined in K.S.A. 65-1734, and amendments thereto.

(b) Any such recycling must be in compliance with state and federal laws.

(c) This section shall take effect on and after July 1, 2011.

New Sec. 6. The board shall prepare proposed rules and regulations the board deems necessary to carry out the provisions of sections 1 through 5, and amendments thereto, on or before January 1, 2011. The board shall adopt such rules and regulations to be effective on or after July 1, 2011.

Sec. 7. On and after July 1, 2011, K.S.A. 2009 Supp. 65-1727 is hereby amended to read as follows: 65-1727. (a) On or before October 15 of each year, the state board of mortuary arts shall determine the amount of funds that will be required during the next ensuing two years to properly administer the laws which the board is directed to enforce and administer under the provisions of article 17 of chapter 65 of the Kansas Statutes Annotated, and acts amendatory of the provisions thereof and supplemental thereto, and by rules and regulations shall fix fees in such reasonable sums as may be necessary for such purposes within the following limitations:

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| Embalmers examination fee, not more than | 300 \$300 |
| Embalmers endorsement application fee, not more than..... | 400 \$500 |
| Embalmers reciprocity application fee, not more than | 400 500 |
| Funeral directors examination fee, not more than | 300 400 |
| Funeral directors reciprocity application fee, not more than | 400 500 |
| Embalmers/funeral directors reciprocity application fee, not more than | 400 500 |
| Assistant funeral directors application fee, not more than | 200 300 |
| Assistant funeral directors examination fee, not more than..... | 200 300 |
| Embalmers license and renewal fee, not more than | 250 350 |
| Funeral directors license and renewal fee, not more than..... | 350 450 |
| <i>Crematory operator's license and renewal fee, not more than</i> | 200 |
| Assistant funeral directors license and renewal fee, not more than | 300 400 |
| Apprentice embalmers registration fee, not more than | 150 250 |
| Funeral establishment license fee, not more than..... | 800 1,000 |
| Branch establishment license fee, not more than | 800 1,000 |
| Crematory license fee, not more than | 800 1,000 |
| Crematory renewal fee, not more than | 800 1,000 |
| Funeral establishment/crematory license fee, not more than..... | 1000 1,500 |
| Funeral establishment/crematory renewal fee, not more than..... | 1000 1,500 |
| Branch establishment/crematory license fee, not more than | 1000 1,500 |
| Branch establishment/crematory renewal fee, not more than | 1000 1,500 |
| Duplicate licenses..... | 20 30 |
| Rulebooks | 20 |
| Continuing education program sponsor applications..... | 25 |
| Continuing education program licensee applications | 25 |

At least 30 days prior to the expiration date of any license issued by the board, the board shall notify the licensee of the applicable renewal fee therefor.

(b) The fees established by the board under this section immediately prior to the effective date of this act shall continue in effect until such fees are fixed by the board by rules and regulations as provided in this section. An owner of a licensed funeral establishment or licensed branch establishment and a licensed crematory may be charged by the board a combined funeral establishment/crematory license or renewal fee or branch establishment/crematory license or renewal fee under this section in lieu of a separate license or renewal fee for each facility.

(c) The state board of mortuary arts may license embalmers via endorsement from another state: (1) if the individual has been licensed for at least five years and has completed at least five consecutive years of active practice in embalming; (2) has passed the national examination written by the international conference of funeral service examining

boards; and (3) has not had any adverse action taken against such licensee by the state board in which licensure is held. The original fee for such endorsement license and the renewal fee shall be in the amounts fixed by the board in accordance with the provisions of this section.

(d) Fees paid to the board are not refundable.

Sec. 8. On and after July 1, 2011, K.S.A. 65-1760 is hereby amended to read as follows: 65-1760. As used in this act, unless the context clearly shows otherwise:

(a) “Alternative container” means a receptacle, other than a casket, in which dead human bodies are transported to the crematory and placed in the cremation chamber for cremation. An alternative container shall be (1) composed of readily combustible *or consumable* materials suitable for cremation, (2) able to be closed in order to provide a complete covering for the dead human bodies, (3) resistant to leakage or spillage, (4) rigid enough for handling with ease, and (5) able to provide protection for the health, safety and personal integrity of crematory personnel.

(b) “Authorizing agent” means a person legally entitled to authorize the cremation and final disposition of specific dead human bodies as defined in K.S.A. 65-1734, and amendments thereto.

(c) “Board” means the state board of mortuary arts.

(d) “Cremated remains” means all human remains recovered after the completion of the cremation of a dead human body, which may possibly include the residue of any foreign matter including casket material, bridgework or eyeglasses, that was cremated with the dead human body.

(e) “Cremation” means the ~~reduction of a dead human body to essential elements through direct exposure to intense heat and flame and the repositioning or movement of the body during the process to facilitate reduction, the processing of the cremated remains after removal from the cremation chamber, placement of the processed remains in a cremated remains container and release of the cremated remains to an appropriate party~~ *mechanical and/or other dissolution process that reduces human remains to bone fragments. Cremation includes the processing and usually includes the pulverization of the bone fragments.*

(f) “Cremation chamber” means the enclosed space within which the cremation of a dead human body is performed. Such chambers shall be used exclusively for the cremation of human remains.

(g) “Crematory” means a business premises that houses the cremation chamber and holding facility where dead human bodies are cremated. A crematory shall be maintained at a fixed and specific street address.

(h) “Crematory operator” means a person who is engaged in, conducting or holding oneself out as engaged in or conducting, the business of cremation.

(i) “Crematory operator in charge” means the *licensed* crematory operator who is responsible to ensure that the crematory’s license is current and that the licensed crematory is in compliance with the laws and regulations of this state. Nothing in this definition shall relieve other persons involved with a cremation from complying with state and federal laws and regulations.

~~(j)~~ (j) “Dead human body” means a lifeless human body or such parts of a human body or the bones thereof from the state of which it reasonably may be concluded that death recently occurred.

~~(k)~~ (k) “Funeral director” means a person who holds a current license as a funeral director issued by the board.

~~(l)~~ (l) “Funeral establishment” means a funeral establishment or branch establishment as licensed by the board.

~~(m)~~ (m) “Holding facility” means an area within or adjacent to a licensed crematory designated for the retention of dead human bodies prior to the act of cremation that shall:

(1) Comply with any applicable public health statute, regulation or ordinance;

(2) preserve the dignity of the dead human body;

(3) recognize the integrity, health and safety of the crematory's personnel operating the crematory; and

(4) be secure from access by anyone other than authorized personnel.

~~(m)~~ (n) "Potentially hazardous implant" means any device previously placed within the now deceased human body that would result in potential harm or damage at any time during the cremation process.

~~(n)~~ (o) "Temporary container" means a receptacle for cremated remains, usually composed of cardboard, plastic or similar material, that can be closed in a manner that prevents the leakage or spillage of the cremated remains or the entrance of foreign material, and is a single container of sufficient size to hold the cremated remains.

~~(o)~~ (p) "Urn" means a receptacle designed to encase the cremated remains.

Sec. 9. On and after July 1, 2011, K.S.A. 2009 Supp. 65-1762 is hereby amended to read as follows: 65-1762. (a) The *licensed* crematory operator in charge shall supervise the licensed crematory on a full-time or a part-time basis and perform such other duties relating to the supervision of a licensed crematory as prescribed by the board by rules and regulations. The crematory operator in charge of a licensed crematory must hold a *Kansas crematory operator's license*. *Additionally, a crematory operator in charge must hold a funeral director's or embalmer's license unless the crematory only receives dead human bodies for cremation through licensed funeral establishments or branch funeral establishments.*

(b) *Only licensed crematory operators may perform cremation.*

(c) No crematory operator or crematory operator in charge shall cremate or cause to be cremated any dead human body until it has received:

(1) A cremation authorization form signed by an authorizing agent.

The written authorization shall include:

(A) The identity of the dead human body and the time and date of death;

(B) the name of the funeral director or assistant funeral director and the funeral establishment or branch establishment, or the authorizing agent, that obtained the cremation authorization;

(C) notification as to whether the cause of death occurred from a disease declared by the department of health and environment to be infectious, contagious, communicable or dangerous to the public health;

(D) the name of the authorizing agent and the relationship between the authorizing agent and the decedent;

(E) authorization for the crematory to cremate the dead human body;

(F) a representation that the dead human body does not contain a pacemaker or any other material or implant that may be potentially hazardous or cause damage to the cremation chamber or the person performing the cremation;

(G) the name of the person authorized to receive the cremated remains from the crematory; and

(H) the signature of the authorizing agent, attesting to the accuracy of all representations contained on the cremation authorization form.

(2) A completed and executed coroner's permit to cremate, as is provided in K.S.A. 65-2426a, and amendments thereto, indicating that the dead human body is to be cremated.

Sec. 10. On and after July 1, 2011, K.S.A. 65-1763 is hereby amended to read as follows: 65-1763. (a) No body shall be cremated with a pacemaker or other potentially hazardous implant in place. The authorizing agent for the cremation of the dead human body shall be responsible for informing the licensed funeral director, assistant funeral director, embalmer, *crematory operator* or crematory operator in charge about a known pacemaker or other potentially hazardous implant. The authorizing agent shall be responsible for ensuring that any known pacemaker or hazardous implant is removed before delivery of the dead human body to the crematory. Bodies with pacemakers or hazardous implants in the custody of a crematory operator shall have any pacemaker

or hazardous implant removed by an embalmer at a funeral establishment or branch establishment with an embalming preparation room unless the removal is to take place at a medical facility by the appropriate medical personnel.

(b) A crematory shall hold dead human bodies, prior to their cremation, according to the following provisions of this subsection:

(1) Whenever a crematory is unable to cremate the dead human body immediately upon taking custody thereof, the crematory operator in charge shall place the dead human body in a refrigeration facility at 40 degrees fahrenheit or less, unless the dead human body has been embalmed, or shall store the dead human body in a cremation container at a funeral establishment or branch establishment *with a preparation room or holding facility approved by the board*; and

(2) a crematory operator *or crematory operator* in charge shall not be required to accept for holding a cremation container from which there is any evidence of leakage of body fluids from the dead human body therein.

(c) No unauthorized person *as determined by the crematory operator in charge of the crematory* shall be permitted in the crematory area while any dead human body is in the crematory area awaiting cremation, being cremated or being removed from the cremation chamber.

(d) The simultaneous cremation of more than one dead human body within the same cremation chamber is prohibited without specific written authorization to do so from all authorizing agents for the dead human bodies to be so cremated. Such written authorization shall exempt the crematory operator *and crematory operator* in charge from all liability for the comingling of the cremated remains during the cremation process.

(e) The crematory shall maintain an identification system that will insure that the cremated remains can be identified, as indicated on the cremation authorization form, throughout all phases of the cremation process.

(f) Upon completion of the cremation, and insofar as practicable, all of the recoverable residue of the cremation process shall be removed from the cremation chamber. If possible, the noncombustible materials or items shall be separated from the cremated remains and disposed of, in a lawful manner, by the crematory. The cremated remains shall be reduced by motorized mechanical device to granulated appearance appropriate for final disposition.

(g) Cremated remains shall be packed as follows:

(1) The cremated remains with proper identification shall be placed in a temporary container or urn, unless specific written authorization has been received from the authorizing agent or as provided in paragraph (2) of this subsection. The temporary container or urn contents shall be packed with clean packing materials;

(2) if the cremated remains will not fit within the dimensions of a temporary container or urn, the remainder of the cremated remains shall be returned to the authorizing agent or its representative in a separate container attached to the first container or urn identifying such containers as belonging together;

(3) when a temporary container is used to return the cremated remains, that container shall be, at a minimum, a cardboard box with all seams taped closed to increase the security and integrity of that container. The outside of the container shall be clearly identified with the name of the crematory and an indication that the container is a temporary container; and

(4) if the cremated remains are to be shipped, the temporary container or designated receptacle ordered by the authorizing agent shall be securely packed in a suitable, sturdy, non-fragile container and sealed properly. Cremated remains shall be shipped only by a method which has an internal tracing system available and which provides a receipt signed by the person accepting delivery.

Sec. 11. On and after July 1, 2011, K.S.A. 65-1764 is hereby amended to read as follows: 65-1764. (a) An authorizing agent signing a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth in such cremation authorization form, including the identity of the deceased whose remains are sought to be cremated and such authorization agent's authority to order such cremation. Any person signing a cremation authorization form as an authorizing agent shall be personally and individually liable for all damage occasioned thereby and resulting therefrom. A crematory operator, *crematory operator* in charge, *embalmer*, *assistant funeral director* or a funeral director may rely upon the representations of the authorizing agent in the cremation authorization form.

(b) A funeral director, assistant funeral director or crematory operator in charge shall have the authority to arrange the cremation of a dead human body upon the receipt of a cremation authorization form signed by an authorizing agent. A funeral director, assistant funeral director, *embalmer*, *crematory operator* or crematory operator in charge who pursuant to a cremation authorization arranges a cremation, cremates a dead human body then releases or disposes of the cremated remains shall not be liable for such acts.

(c) A funeral director, assistant funeral director, *crematory operator* or crematory operator in charge who refuses to arrange a cremation, to accept a dead human body or to perform a cremation shall not be liable for refusing to arrange, to accept the dead human body or to perform the cremation until they receive a court order or other suitable confirmation that the cause of the refusal has been settled. Circumstances causing such a refusal may include:

- (1) Awareness of a dispute concerning the cremation of the dead human body; or
- (2) a reasonable basis for questioning any of the representations made by the authorizing agent; or
- (3) any other lawful reason.

Sec. 12. On and after July 1, 2011, K.S.A. 65-1765 is hereby amended to read as follows: 65-1765. If an authorizing agent informs the funeral director, assistant funeral director, *embalmer*, *crematory operator* or the crematory operator in charge on the cremation authorization form of the presence of a pacemaker or hazardous implant in the dead human body such informed person shall be responsible for ensuring that all necessary steps have been taken to remove the pacemaker or hazardous implant. Should ~~a funeral director or assistant funeral director~~ *anyone* who delivers a dead human body to a crematory after being informed that a pacemaker or hazardous implant is within the dead human body ~~and fails~~ *fail* to ensure that the pacemaker or hazardous implant has been removed from the dead human body pursuant to subsection (b) of K.S.A. 65-1762, and amendments thereto, prior to delivery, and should the dead human body be cremated with the pacemaker or hazardous implant, then such ~~funeral director or assistant funeral director~~ *individual* who delivered the dead human body to the crematory shall be liable for all resulting damages.

Sec. 13. On and after July 1, 2011, K.S.A. 65-1766 is hereby amended to read as follows: 65-1766. (a) The state board of mortuary arts shall adopt rules and regulations for the administration and implementation of this act. Such rules and regulations shall include the conditions under which dead human bodies of persons who died from an infectious, contagious, communicable or dangerous disease can be transported from any place in the state to a crematory for the purpose of cremation; shall establish minimal standards of sanitation, required equipment and fire protection for all crematories as deemed necessary for the protection of the public.

(b) A crematory operator in charge may adopt reasonable policies, not inconsistent with this act or rules and regulations adopted by the board.

(c) The state board of mortuary arts may refuse to issue or renew a license or revoke, *condition, limit, censure, fine* or suspend a license for the crematory; *or crematory operator* upon a finding that *a crematory operator or the crematory operator* in charge:

(1) Has maintained or operated a building or structure within the state as a crematory in violation of the provisions of this act or the rules and regulations adopted by the board of mortuary arts;

(2) has performed a cremation without a cremation authorization form signed by an authorizing agent;

(3) has made any misleading, deceptive, untrue or fraudulent statements in applying for or securing an original or renewal license;

(4) has been convicted of a felony or an offense of moral turpitude, and has not demonstrated to the board's satisfaction that such crematory operator in charge has been sufficiently rehabilitated to warrant the public trust;

(5) has violated any law, ordinance or rule and regulation affecting the handling, custody, care or transportation of dead human bodies or cremated remains;

(6) has been rendered unfit to operate a crematory by reason of illness, alcohol, chemicals or other types of substances, or as a result of any mental or physical condition;

(7) has failed or refused to properly protect or guard against contagious, communicable or infectious disease, or the spreading thereof;

(8) has or such person's agent, employee or representative has advertised, solicited or sold merchandise or services in a manner which is fraudulent, deceptive or misleading in form or content;

(9) has been found by a court of competent jurisdiction to be mentally ill, mentally disabled, not guilty by reason of insanity or incompetent to stand trial by a court of competent jurisdiction;

(10) has failed to furnish the board, its investigators or representatives, information requested by the board;

(11) has failed to report to the board any adverse action taken against the *crematory operator*, crematory operator in charge or the crematory by another state or licensing jurisdiction, professional association or society, governmental agency, law enforcement agency or a court;

(12) has knowingly submitted any misleading, deceptive, untrue or fraudulent representation on a claim form, bill, statement or similar information to an authorizing agent, consumer or representative of the board;

(13) has had a license to operate a crematory, *crematory operator or similar license* revoked or suspended, or had other action taken against oneself or had an application for a license denied by the proper licensing authority of another state, territory, District of Columbia or other country. A certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof;

(14) *has aided or abetted an unlicensed person to practice any activity for which a license is required under article 17 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, or supplemental thereof;*

(15) has violated any rules and regulations adopted by the board or any state or federal law related to the practice of operating a crematory; or

~~(15)~~ (16) has failed to pay any fee required under this act.

(d) All administrative proceedings taken by the board pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(e) A violation of this section or any provision of this act is hereby declared to be a class A nonperson misdemeanor.

Sec. 14. On and after July 1, 2011, K.S.A. 65-1768 is hereby amended to read as follows: 65-1768. (a) The crematory operator in charge of a crematory, located or doing business within the state, shall apply for and obtain a crematory license from the board for each crematory.

(b) An application for a new license is required if the crematory has a change in ownership, name, location or a change in the crematory operator in charge. Such application shall be made to the board at least 30 days prior to the change of ownership, name or location or change in the crematory operator in charge.

(c) The crematory license fee and crematory license renewal fee shall be fixed by the board under K.S.A. 65-1727, and amendments thereto. The disposition of all funds collected under the provisions of this act shall be in accordance with the provisions of K.S.A. 65-1718, and amendments thereto.

(d) A crematory license shall expire every two years on a date established by the board. To continue operation of a crematory, a crematory operator in charge shall submit a biennial renewal application form and the crematory license renewal fee to the board before the expiration date of such license.

(e) A crematory license shall be judged delinquent on midnight of the expiration date and may only be renewed after that day by payment of a renewal fee and a reinstatement fee in an amount equal to the renewal fee.

(f) It is unlawful for any person who is not an operator in charge of a crematory *or a crematory operator* under this act to operate a crematory ~~or~~, hold oneself out as operating a crematory *or engage or attempt to engage in the business of crematory operator*.

(g) The Kansas university medical center shall be exempt from this statute for the purpose of cremating remains donated for dissecting, demonstrating or teaching purposes.

Sec. 15. On and after July 1, 2011, K.S.A. 65-1760, 65-1763, 65-1764, 65-1765, 65-1766 and 65-1768 and K.S.A. 2009 Supp. 65-1727 and 65-1762 are hereby repealed.

Sec. 16. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.