

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 1:30 p.m. on February 19, 2004, in Room 526-S of the Capitol.

All members were present except:

Representative Doug Patterson- excused
Representative Jerry Williams- excused
Representative Judy Showalter- excused
Representative Joe McLeland - excused

Committee staff present:

Dr. William Wolff, Legislative Research Department
Renaee Jefferies, Office of Revisor of Statutes
Gary Deeter, Secretary

Conferees appearing before the committee:

Mack Smith, Executive Secretary, Kansas State Board of Mortuary Arts
Pam Scott, Executive Director, Kansas Funeral Directors and Embalmers Association
Candy Shively, Deputy Secretary, Kansas Department of Social and Rehabilitative Services

Others attending:

See Attached List.

The hearings were chaired by Representatives Stephanie Sharp and Tom Holland.

The Chair opened the hearing on **HB 2657**, an act concerning mortuary arts, and welcomed Mack Smith, Executive Secretary, Kansas State Board of Mortuary Arts. (Attachment 1) Mr. Smith asked for support for the bill, noting technical changes to clarify the intent of the bill. He said currently statutes do not define where a dead human body can be transported following death, a point addressed in the bill. He stated that Section Two gives the Board subpoena authority and Section Three changes some details regarding the embalmer license examination, with the fourth section amending **K.S.A 65-1751** to allow the Board a wider range of disciplinary actions.

The Chair closed the hearing on **HB 2657** and opened the hearing on **HB 2717**, an act licensing crematory operators. Pam Scott, Executive Director, Kansas Funeral Directors and Embalmers Association, testified regarding the need for the bill. (Attachment 2) She said that since the bill was introduced, she discovered that all crematories in Kansas have holding facilities except three that embalm immediately, so her testimony included an amendment to the bill that deletes the requirement for a licensed crematory to have a holding facility and adds wording to allow any crematory to receive a dead body when it comes through a licensed funeral establishment. She said the intent of the bill was to assure that dead bodies were properly cared for and not to interfere with any crematory that had proper facilities to care for dead bodies. She noted that current law does not require a crematory operator to be licensed, and if a body is delayed in arriving at a crematory, the body should be cared for by someone who is knowledgeable in

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these areas.

The Chair closed the hearing on **HB 2717** and opened the hearing on **HB 2718**, an act increasing the limits on funeral service agreements. (Attachment 3) Pam Scott explained that the statutory limit for funeral service agreements had not increased for 5 years, and the current limit of \$3500 was not sufficient to cover the average funeral costs, which, she noted, was nationally \$5211 for an adult, a price which excluded a cemetery lot and burial expense. She said the bill would have no negative fiscal impact and might have a positive one, since Medicaid funds would not be needed where there was an adequate funeral service agreement.

Candy Shively, Deputy Secretary, Kansas Department of Social and Rehabilitative Services, agreed with Ms. Scott's assessment, stating that increasing the limits could reduce the requirements for Medicaid funds to assist with funerals. (Attachment 4)

The Chair closed the hearing on **HB 2718**.

Fiscal notes were included for each bill:

(**HB 2657** Attachment 5)

(**HB 2717** Attachment 6)

(**HB 2718** Attachment 7)

A motion was made and seconded to amend **HB 2657** as recommended by the conferee's testimony. The motion passed. A motion was then made and seconded to pass **HB 2657** out favorably as amended. The motion passed.

A motion was made and seconded to amend **HB 2717** as recommended by the conferee. The motion passed. A further motion was made to pass out favorably **HB 2717** as amended, which also passed.

A motion to recommend **HB 2718** favorable for passage was made, seconded, and passed.

Staff Bill Wolff gave a briefing on **HB 2820**, a technical clean-up bill that brings the language of various licensees regulated by the Board of Healing Arts into uniformity. He said that the bill repetitively deals with inactive licenses, "federally active" licenses, lapsed licenses and their renewal, disciplinary measures authorized by the Board, and fee limits for various practitioners: podiatrists, physician assistants, physical therapists, respiratory therapists, occupational therapists, and naturopathic doctors (the last registered, not licensed).

Regarding **HB 2867**, he said the bill creates a new law by establishing a medical review panel for adult care homes. He explained that the term "health-care provider" included corporations and their employees at a facility and might include a physician treating a resident at the facility, also noting that the term "medical malpractice" was defined as any action alleging personal injury from health care rendered. He

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said Section 3 requires a medical review panel to be created to hear a complaint before any court action can go forward, the review panel being appointed by the Commissioner of Insurance, given subpoena authority, and consisting of a geriatric-trained clinician, a licensed physician, and a non-voting attorney. He listed the conclusions available to the panel, noting that the findings of the panel must be in writing and are non-binding, that the panel serves as an expert advisory board, that the panel members have absolute immunity from civil liability, and that the findings may be used as evidence in a court proceeding. Members are paid for their expenses through the Insurance Commission. Dr. Wolff said that one provision of the bill (Section 10) requires the medical review panel hearing to precede a federal court action; he questioned whether a state has authority to require such a stipulation.

Chairman Morrison took the chair to discuss with the Committee what bills needed to be considered further. A motion was made and seconded to table **HB 2538**. The motion passed with two dissenting votes, those of Representative Wilson and Representative Holland.

A motion was made to table **HB 2562**. The motion received a second and was passed with two dissenting votes, those of Representative Mast and Representative Goico.

The Committee agreed to work **HB 2478, 2698 and 2658** the following day.

A motion was made, seconded and passed to approve the minutes for February 16 and 17.

The meeting was adjourned at 2:50 p.m. The next meeting is scheduled for Friday, February 20, immediately following the adjournment of the House.

Thursday, February 19, 2004

Chairperson Jim Morrison
House Health and Human Services Committee

Chairperson Morrison and Members of the Committee:

Thank you for the opportunity to appear before your committee today. My name is Mack Smith, and I am the executive secretary to the Kansas State Board of Mortuary Arts. I appear before you to request your support of House **Bill 2657**.

Section one defines where a dead human body may be taken to upon removal from the place of death—something previously not specifically defined. I would like to request an amendment to include: ", a coroner or medical examiner facility" in line 19 after the words: "a cemetery " Currently, KSA 65-1713a defines a funeral establishment as a business premise where a funeral service, visitation or lying in-state of a dead human body is arranged and conducted, or dead human bodies are embalmed or otherwise prepared for a funeral service, visitation, lying in-state, burial, cremation or transportation . . . There is currently no law that specifically defines where a dead human body can be transported to following death. This section addresses that issue.

Section two would provide the Mortuary Arts Board with investigative subpoena authority. This section is being added at the suggestion of the board's legal counsel and would assist with the investigative process when unlicensed parties are involved. Examples where having investigative subpoena authority would be helpful include complaints involving casket stores, third-party pre-need sellers and parties not licensed by the board.

Section three amendments would allow for changes relating to the embalmer examination. If this bill was to become law, some of the information currently contained in the statute would be placed into regulation to simplify the process when the agency that writes and administers the national embalmer examination (The International Conference of Funeral Service Examining Boards) endorsed by the Mortuary Arts Board makes changes in the manner in which the examination is constructed, administered and graded.

Section four amendments to the statute (KSA 65-1751) that allows the board to

Attachment 1
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take disciplinary action. The amendments would allow the board a wider range of actions by adding authority to condition or limit a license as well as to impose a maximum \$1,000 fine per violation.

Section five eliminates the provision that currently relates to the issuance and enforcement of subpoenas issued in the course of a hearing. Issuance of a hearing subpoena is covered in the Kansas Administrative Procedure Act; and enforcement of a hearing subpoena is covered in the Kansas Act for Judicial Review and Enforcement of Agency Actions.

Economic Impact Statement

The only known areas of economic impact would be the cost to the Mortuary Arts Board involving subpoenas and costs to the individuals found guilty (following the guidelines of the Kansas Administrative Procedure Act) of the provisions outlined in section four in the bill.

Again, thank you for the opportunity to appear before the committee today. I will do my best to answer any questions you may have at this time and request the committee's consideration for passage of this bill with the one amendment requested in section one.

Respectfully submitted:

Mack Smith, Executive Secretary
The Kansas State Board of Mortuary Arts
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Topeka, KS 66603-3733
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MS



February 19, 2004

To: House Health and Human Services Committee

From: Pam Scott, Executive Director
Kansas Funeral Directors and Embalmers Association

Re: House Bill No. 2717

Chairman Morrison and members of the Committee, I appear before you today on behalf of the Kansas Funeral Directors and Embalmers Association (KFDA) in support of House **Bill No. 2717**. The KFDA has a membership of over 300 funeral homes, which is over 90% of the funeral homes in the state of Kansas.

House Bill No. 2717 was introduced at the request of the KFDA. The bill provides that a licensed crematory with a holding facility must be under the supervision of a licensed funeral director or embalmer. When the bill was introduced, the KFDA was under the understanding that not all crematories had holding facilities. Since that time, we have discovered that all crematories have some type of room that serves as a holding facility.

It was not the intent of the bill, as written, to require all crematories be under the supervision of a licensed funeral director or embalmer. The requirement was meant to apply just to those crematories that are not conducting immediate cremations and might hold bodies for an extended period of time. Therefore, to accomplish this objective, we are requesting that Section 1 (a) of the bill beginning on line 17 be amended to read as follows:

The crematory operator in charge of a licensed crematory ~~with a holding facility~~ must hold a Kansas 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.

The KFDA believes this amendment is the best way to assure that dead human bodies are properly cared for and that the health and safety of the public is protected. We do not believe dead human bodies should be held by a crematory, except for direct cremation, unless a licensed funeral professional is the operator in charge of the crematory.

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To our knowledge, there are only three crematories in the state of Kansas at which the crematory operator in charge is not a licensed funeral director or embalmer. It is our understanding that those three crematories only accept bodies for cremation from licensed funeral establishments. Bodies at those facilities are not held for an extended period of time. Therefore this bill, if amended, should have no impact on their operations.

Funeral directors and embalmers are trained to handle dead human bodies and are charged with the responsibility of taking appropriate precautionary measures to prevent the spread of infectious and contagious diseases from dead human bodies. This is especially important with the increased threat of bio-terrorism. Their license also requires that they are knowledgeable on laws concerning vital statistics, cremation, OSHA, and other death care issues. They must pass a test to receive their license and are required to obtain continuing education to keep them abreast of any changes in applicable statutes or regulations.

A crematory operator, under current law, is not licensed. There is no prerequisite that he or she receive education, training or have experience in funeral service, death care, cremation or the Kansas statutes relating thereto .

This bill becomes even more important if House Bill No. 2657 is passed. That bill provides that a dead human body can be removed from the location of death to a licensed crematory. It is especially important that a licensed funeral professional be in charge of the crematory if that were to occur. In some instances the deceased may have been dead for sometime before reaching the crematory, so precautionary measures will need to be taken. It is impossible to determine how much time will pass before a cremation can actually take place. It will take time to obtain information for and complete an application for a death certificate. A coroner's permit to cremate must also be obtained which may require a death investigation. Because cremation is final, it is important that these responsibilities are completed by someone with the education, training, and experience to do so in accordance with the laws of the state of Kansas. That person is a licensed funeral director or embalmer.

The KFDDA believes the passage of House Bill No. 2717 is important for the protection of the public and will assure that dead human bodies are handled with dignity. Therefore we ask for your support of this legislation

Thank you for the opportunity to testify. I would be happy to stand for any questions the committee may have.

House Bill No.2717

65-1762. Supervision; cremation requirements; authorization form and coroner's permit.

(a) The 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 with a holding facility must hold a Kansas funeral directors or embalmers license unless the crematory only receives dead human bodies for cremation through licensed funeral establishments or branch funeral establishments.

(b) No crematory 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 if 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.

History: L. 2001, ch. 183, § 3; Jan. 1, 2002.



~~Attachment 2-3~~
~~HHS 2-19-04~~

February 19, 2004

To: House Health and Human Services Committee

From: Pam Scott, Executive Director
Kansas Funeral Directors and Embalmers Association

Re: House Bill No. 2718

Chairman Morrison and members of the Committee, I appear before you today on behalf of the Kansas Funeral Directors and Embalmers Association (KFDA) in support of House **Bill No. 2718**. The KFDA represents over 300 funeral homes across the state of Kansas.

House Bill No.2718 was introduced at the request of the KFDA. The bill would increase the dollar amount of funds that can be placed in an irrevocable funeral agreement, contract or plan to \$5000 plus the retail price of a casket, urn and outside burial container. Currently \$3500 plus the retail price of a casket, urn and outside burial container can be placed in an irrevocable account. This has not increased for over 5 years.

The KFDA is requesting this increase because the \$3500 is not sufficient when considering today's funeral costs. The \$3500 has not been increased since 1998. Statistics released by Federated Funeral Directors of America for 2002 show the cost of an average "Regular Adult Funeral" nationwide as \$5211.21. This amount does not include the outside burial container, cemetery expenses or cash advance items. The average Gross sale reported was \$6876.10. The Federated Funeral Directors of America statistics show the cost of an average "Regular Adult Funeral" in Kansas is \$5123.57. The increase in the amount of funds that can be placed in these accounts is needed to cover the cost of an average funeral.

We do not believe the increase contained in this bill will have any adverse fiscal impact on the state of Kansas. In fact it could have a favorable fiscal impact. Individuals going on medical assistance are encouraged to place funds into prearranged funeral agreements when spending down their assets to qualify for assistance. The placing of funds in a prearranged funeral account has the effect of reducing the amount of funds the state pays out under the funeral assistance program because recipients have set aside funds to pay for their funeral expenses instead of leaving the state responsible. Any

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funds remaining in a prearranged funeral account, after the payment of funeral expenses, are paid to the Estate Recovery Unit of the Kansas Department of Social and Rehabilitation Services, to the extent of medical assistance that has been expended on the deceased.

We would appreciate your support of House Bill No.2718. I would be happy to respond to any questions you may have.

Kansas Department of

Social and Rehabilitation Services

Janet Schalansky, Secretary

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House Health and Human Services

February 19, 2004

**HB 2718 - Irrevocable Funeral Service Agreement
Contracts**

Integrated Service Delivery
Candy Shively, Deputy Secretary
785-296-3271

ation contact:

Public and Governmental Services Division
Tanya Dorf, Director of Legislative Affairs

Docking State Office Building
915 SW Harrison, 6th Floor North
Topeka, Kansas 66612-1570
phone: 785.296.3271
fax: 785.296.4685
www.srskansas.org

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**Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary**

House Health and Human Services
February 19, 2004

HB 2718 - Irrevocable Funeral Service Agreement Contracts

Representative Morrison and members of the Committee, thank you for the opportunity to appear on HB 2718. My name is Candy Shively, Deputy Secretary with SRS. HB 2718 increases the current limit on irrevocable funeral agreements from \$3500 to \$5000.

Under current Medicaid eligibility rules such agreements are exempted as countable assets along with the value of any prepaid burial merchandise such as a casket or burial container. SRS' experience is that many of our elderly Medicaid consumers have or obtain such agreements to make sure there are sufficient resources to pay for their funeral and burial needs. Because of limited funding available in the State's funeral assistance program, a prepaid funeral agreement offers better protection for both the individual and his or her family.

Due to inflationary factors since the standard was last increased and the lack of any discernable impact on the agency, SRS would not oppose the proposed increase.

Thank you for the opportunity to present. I would be happy to stand for questions.

February 18, 2004

The Honorable Jim Morrison, Chairperson
House Committee on Health and Human Services
Statehouse, Room 171-W
Topeka, Kansas 66612

Dear Representative Morrison:

SUBJECT: Fiscal Note for HB 2657 by House Committee on Health and Human Services

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2657 is respectfully submitted to your committee.

HB 2657 would change current law regarding various duties of the Board of Mortuary Arts. A dead body could be removed from the location of death and transported only to a licensed facility authorized by the Board. The Board would be given subpoena authority when conducting an investigation based on a consumer complaint or when other reasonably reliable information is given to the Board. The Board would be able to set the passing scores of the written embalmer examination through the rules and regulations process. Current law establishes a passing score. Fines of not more than \$1,000 could be levied against licensees for violating conditions of licensure.

The section of the bill regarding the ability to use subpoenas could require additional expenditures by the Board. The Board states that any costs could be absorbed within authorized budget levels. Also, the provision that would allow the Board to assess fines could result in additional revenues to the agency's fee fund. However, the amount of additional revenue is not known.

Sincerely,

Duane A. Goossen
Director of the Budget

cc: Mack Smith, Mortuary Arts

Attachment 5
HHS 2-19-04

February 18, 2004

The Honorable Jim Morrison, Chairperson
House Committee on Health and Human Services
Statehouse, Room 171-W
Topeka, Kansas 66612

Dear Representative Morrison:

SUBJECT: Fiscal Note for HB 2717 by house Committee on Health and Human Services

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2717 is respectfully submitted to your committee.

HB 2717 would require the person in charge of a licensed crematory with a holding facility to have a state funeral director's or embalmer's license.

The Board of Mortuary Arts reports the state has 24 licensed crematories in the state, with 21 having holding facilities. Of those having holding facilities, two do not have a licensed embalmer or a funeral director as a crematory operator. Passage of the bill would require the two facilities to have operators with a funeral director's or embalmer's license. The Board indicates that the bill would have no fiscal effect on the agency.

Sincerely,

Duane A. Goossen
Director of the Budget

cc: Mack Smith, Mortuary Arts

Attachment 6
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February 18, 2004

The Honorable Jim Morrison, Chairperson
House Committee on Health and Human Services
Statehouse, Room 171-W
Topeka, Kansas 66612

Dear Representative Morrison:

SUBJECT: Fiscal Note for HB 2718 by House Committee on Health and Human Services

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2718 is respectfully submitted to your committee.

HB 2718 would increase the maximum irrevocable prefinanced funeral agreement amount from \$3,500 to \$5,000.

Because consumers pay for these agreements, passage of HB 2718 would have no fiscal effect on the Board of Mortuary Arts.

Sincerely,

Duane A. Goossen
Director of the Budget

cc: Mack Smith, Mortuary Arts

Attachment 7
HHS 2-19-04