

CHAPTER 57
HOUSE BILL No. 2657

AN ACT concerning mortuary arts; relating to removal of dead bodies; educational requirements; examination and licensure; subpoenas; amending K.S.A. 65-1701a, 65-1751 and 74-1704 and repealing the existing sections.

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

New Section 1. Except as otherwise provided by law and in accordance with any applicable legal requirements, a dead human body which is removed from the location of death shall be transported only to a licensed funeral establishment, a licensed branch funeral establishment containing an embalming preparation room or a holding facility, a licensed crematory containing a holding facility, a hospital, a cemetery, a coroner or medical examiner facility, the university of Kansas medical center or other location of final disposition.

New Sec. 2. (a) In connection with any investigation, based upon a complaint or other reasonably reliable information received by the state board of mortuary arts, the board or its duly authorized agent or employee may issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses, to compel the production of any physical evidence for examination or copying or to compel the taking of the deposition of witnesses, residing within or outside of the state, to be taken in the manner prescribed by law for taking depositions in civil actions in the district courts, if such evidence relates to practices which may be grounds for disciplinary action.

(b) Within five days after the service of the subpoena or subpoena duces tecum on any person requiring the production of any evidence in the person's possession or under such person's control, such person may petition the state board of mortuary arts to revoke, limit or modify such subpoena. The board shall revoke, limit or modify such subpoena if in its opinion the evidence required does not relate to practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the proceeding or investigation, or does not describe with sufficient particularity the physical evidence which is required to be produced.

(c) Upon application by the state board of mortuary arts or by the person subpoenaed, the district court shall have jurisdiction to issue an order:

(1) Requiring such person to appear before the board or a duly authorized agent of the board to produce evidence relating to the matter under investigation; or

(2) revoking, limiting or modifying the subpoena if in the court's opinion the evidence demanded does not relate to practices which may be grounds for disciplinary action, is not relevant to the charge which is the subject matter of the hearing or investigation or does not describe with sufficient particularity the evidence which is required to be produced.

Sec. 3. K.S.A. 65-1701a is hereby amended to read as follows: 65-1701a. (a) Except as otherwise provided by K.S.A. 65-1701b and amendments thereto, each applicant for a license to practice embalming in this state, in order to be eligible for examination, shall be required to show to the satisfaction of the state board of mortuary arts that: (1) Prior to ~~the effective date of this act~~ *July 1, 1991*, the applicant successfully completed courses in a community college, college or university accumulating at least 60 semester hours and attended a school of mortuary science approved by the board which offers a twelve-month course in mortuary science and prior to the effective date of this act graduated therefrom accumulating during this training at least 30 semester hours in mortuary science; or (2) ~~prior to, on or subsequent to the effective date of this act~~ *on and after July 1, 1991*, the applicant has graduated from a community college, college or university with at least an AA degree in mortuary science, which degree program is approved by the board, ~~and has accumulated during this training at least 30 semester hours in mortuary science.~~

(b) Except as otherwise provided in K.S.A. 65-1701b and amendments thereto, each applicant for a license to practice embalming in this state, in order to be eligible for apprenticeship, shall be required to submit to an examination approved by the state board of mortuary arts. Each applicant shall be required to register with the secretary of the board in

the manner and at the time required by the board before submitting to examination and shall receive an overall score of at least 75% with a minimum of 70% in any one section before successfully passing the examination. The examination fee and registration fee shall be in the amounts fixed by the board in accordance with K.S.A. 65-1727 and amendments thereto. The board may require that fees paid for an examination be paid by the person taking the examination directly to the examination service providing the examination approved by the board.

(c) Except as otherwise provided by K.S.A. 65-1701b and amendments thereto, each applicant for a license to practice embalming in this state, in order to be eligible for licensure, shall successfully pass a written examination established by rules and regulations of the board and shall successfully serve a full-time apprenticeship of one year under the supervision of a Kansas licensed embalmer or an embalmer approved by the board. The board by rules and regulations shall establish the score for the successful completion of the written examination.

(d) The board shall adopt rules and regulations establishing the criteria which a school of mortuary science or college or university offering at least an AA degree in mortuary science shall satisfy in order to obtain board approval under subsection (a). The board may send a questionnaire developed by the board to any school of mortuary science or college or university offering at least an AA degree in mortuary science for which the board does not have sufficient information to determine whether the school, college or university meets the criteria for approval established by rules and regulations adopted under this section. The questionnaire providing the necessary information shall be completed and returned to the board in order for the school, college or university to be considered for approval. The board may contract with investigative agencies, commissions or consultants to assist the board in obtaining information about such schools, colleges or universities. In entering such contracts the authority to approve schools, colleges or universities shall remain solely with the board.

Sec. 4. K.S.A. 65-1751 is hereby amended to read as follows: 65-1751. (a) The state board of mortuary arts may refuse to issue or renew a license, may condition, limit, revoke or suspend a license or may publicly or privately censure a licensee, or may impose a fine not to exceed \$1,000 per violation upon a finding that a licensee or an applicant for a license:

- (1) Has made any misleading, deceptive, untrue or fraudulent statements in applying for or securing an original or renewal license;
- (2) has committed an act of unprofessional or dishonorable conduct or professional incompetency;
- (3) has been convicted of a felony, and the licensee or applicant for a license is unable to demonstrate to the board's satisfaction that such person has been sufficiently rehabilitated to warrant the public trust, or has been convicted of any offense involving moral turpitude or has been convicted of criminal desecration;
- (4) has violated any law, ordinance or rule and regulation affecting the handling, custody, care or transportation of dead human bodies;
- (5) is rendered unfit or unable to practice embalming or funeral directing by reason of illness, alcohol, chemicals or other types of substances, or as a result of any mental or physical condition when certified by a physician as to unfitness as determined by the board after receiving the results of an evaluation by a person licensed to practice medicine and surgery or a person licensed to diagnose and treat mental illness, or both, as directed by the board;
- (6) has failed or refused to properly protect or guard against contagious, communicable or infectious disease, or the spreading thereof;
- (7) has refused to surrender a dead human body upon the request of the next of kin, or legal representative, if there is no next of kin, or person entitled to the custody and control of the body if there is no next of kin available and no legal representative qualified to act;
- (8) or the agent, employee or representative thereof, has advertised, solicited or sold merchandise or services in a manner which is fraudulent, deceptive or misleading in form or content;
- (9) or the agent, employee or representative thereof, has engaged in the uninvited, in-person solicitation of an actual or potential customer, who, because of the customer's particular circumstances, was vulnerable to undue influence, intimidation, coercion or overreaching or has violated a provision of K.S.A. 65-1752 and amendments thereto;

(10) or the agent, employee or representative thereof, has knowingly engaged in at-need solicitation;

(11) has used or employed, directly or indirectly, any agent, representative or person, for the purpose of contacting public officials or agents of institutions by whose influence dead human bodies may be turned over to a particular licensee or funeral establishment;

(12) 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 acts amendatory of the provisions thereof or supplemental thereto;

(13) has had a license to practice embalming or funeral directing revoked or suspended, has been censured or has had other disciplinary action taken against oneself or has 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, an attested copy of the record of the action of the other jurisdiction being presumptive evidence thereof;~~

(14) has cheated on or attempted to subvert the validity of the examination for a license;

(15) has been found to be mentally ill, mentally disabled, not guilty by reason of insanity, not guilty because the licensee suffers from a mental disease or defect or incompetent to stand trial by a court of competent jurisdiction;

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

(17) has failed to report to the board any adverse action taken against the licensee by another state or licensing jurisdiction, a professional association or society, a governmental agency, by a law enforcement agency or a court for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section;

(18) has an adverse judgment, award or settlement against the licensee resulting from the practice of funeral directing or embalming which related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section or has failed to report such matter to the board;

(19) has knowingly submitted any misleading, deceptive, untrue or fraudulent representation on a claim form, bill or statement;

(20) has violated any lawful rules and regulations promulgated by the board or any state or federal law related to the practice of funeral directing, embalming, *cremation* or funeral establishments; ~~or~~

(21) has failed to pay any fee required under this act. ;

(22) *has been found guilty of negligence, incompetence, fraud, misrepresentation or deceit in connection with services rendered as a licensee;*

(23) *has provided misleading, fraudulent or deceptive statements to the board, its investigators or its representatives, when information is legally requested; or*

(24) *has provided misleading, fraudulent or deceptive information when filing a death certificate.*

(b) The board may adopt rules and regulations defining, construing and interpreting the above grounds for licensure action. 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.

(c) As used in this section:

(1) "License" means an embalmer's license, funeral director's license, assistant funeral director's license, funeral establishment license, *crematory license* or branch establishment license.

(2) "At-need solicitation" means any uninvited contact for the purpose of the sale, or attempted sale, of funeral services or merchandise to the family or next of kin of a person after the person's death, or where death is imminent.

Sec. 5. K.S.A. 74-1704 is hereby amended to read as follows: 74-1704. The board shall annually elect a president and vice-president from the members of said board. The vice-president shall act for the president when the president is absent or unable to act. Said officers shall serve for one year or until their successors are elected and qualified. The board shall also elect a secretary, who shall serve for four (4) years, unless removed for cause, and such secretary shall be the executive officer of said

board, but not a member thereof. The secretary shall receive such salary as may be fixed by the board, which shall not be in excess of just compensation for the duties required, and in addition thereto all necessary expenses incurred in the discharge of the duties of said office. The board shall adopt a common seal. The president of said board is hereby authorized to administer oaths to witnesses testifying before said board. In order to carry out the provisions of this act said board shall have the authority to issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents and testimony, and to cause the deposition of witnesses, either residing within or without the state, to be taken in the manner prescribed by law for taking depositions in civil actions in the district courts.

~~In case of disobedience on the part of any person to comply with any subpoena issued in behalf of said board, or on the refusal of any witness to testify to any matters regarding which he or she may be lawfully interrogated, the district court of any county, or the judge thereof, on application of a member of said board, may compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. Each witness who appears before said board by its order or subpoena, other than a state officer or employee, shall receive for his or her attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid upon the presentation of proper vouchers sworn to by such witness and approved by the president and secretary of said board.~~

The board shall employ an investigator-inspector. Such employee shall perform all inspections and conduct the investigative duties of the board and shall be within the classified service of the Kansas civil service act. Upon presentation of proper credentials the investigator-inspector shall have the authority to enter into and inspect any funeral establishment, as said term is defined in K.S.A. 65-1713a, at any reasonable time.

The board shall also have power to employ such agents and attorneys as it may deem necessary for the performance of the work of the board, and may allow them reasonable compensation and their actual necessary expenses incurred in the performance of their duties. It shall also have power to make reasonable rules and regulations establishing ethical standards and practices for embalming and funeral directing, provided the same are not inconsistent with the provisions of this act. Said board shall meet quarterly and may meet as often as the proper and efficient discharge of its duties shall require, but at no time shall the board contract in excess of the amount of its funds on hand.

Sec. 6. K.S.A. 65-1701a, 65-1751 and 74-1704 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 2004.
