

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairperson Susan Wagle at 1:30 p.m. on March 22, 2004 in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Ms. Emalene Correll, Legislative Research
Mr. Norm Furse, Revisor of Statutes
Mrs. Diana Lee, Revisor of Statutes
Ms. Margaret Cianciarulo, Committee Secretary

Conferees appearing before the committee:

Ms. Pam Scott, Executive Director, Kansas Funeral Directors and Embalmers Association
Mr. Dennis Priest, Program Administrator, Economics and Employment Support, Kansas Department of Social and Rehabilitative Services

Others attending:

Please See Attached List.

Approval of Minutes

Upon calling the meeting to order, the minutes of February 17, 23, 24 and March 2, 3, and 4 were passed out to each member of the Committee. The Chair asked that the members notify Ms. Cianciarulo if there were comments and if none are received by the end of the day Friday, March 26, they would stand approved.

Hearing on HB2717 - an act concerning mortuary arts; relating to licensure of crematory operations

The Chair then announced there would be two hearings today, the first, HB2717 and asked Ms Correll to provide a brief overview of the bill. Highlights included:

- amends one of the statutes that the Committee enacted a few years ago that has to do with the licensing crematories;
- this particular statute has to do in part with the responsibilities of a crematory operator in charge which is a defined term within the law;
- the change is more in nature of clarification and would require that the crematory operator in charge must hold a Kansas funeral director's or embalmer's license and then the House Committee amended the bill to say "unless the crematory only receives dead human bodies for cremation through licensed funeral establishments or branch funeral establishments" (so if a body came from an establishment where a licensed funeral director or embalmer was in charge then the crematory would not have to have a funeral director or embalmer license);
- note that the supplemental note is headed "As Recommended by Committee on Health and Human Services," that should read "As Amended by Committee on Health and Human Services"

As there were no questions for Ms. Correll, the Chair called on the only conferee to testify, Ms. Pam Scott, Executive Director, Kansas Funeral Directors and Embalmers Association (KFDEA), who stated that the bill as amended, provides that the crematory operator in charge of a licensed crematory must hold a Kansas funeral director or embalmers' license unless the crematory only receives dead human bodies for cremation through a licensed funeral establishment or branch funeral establishment. She also stated to KFDEAs 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 and that they only accept bodies for cremation from licensed funeral establishments, and that bodies are not held for an extended period of time so the bill should have no impact on their operations. A copy of her testimony is (Attachment 1) attached hereto and incorporated into the Minutes as referenced.

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As there was no opponent, neutral, or written testimony, the Chair asked for questions of the Committee. Senators Salmans and Barnett asked a number of questions including: how long does it take for an embalmer to get a license and what does it require, how long does it take to become a cremator, in the course of study, is there a section set out that deals with cremation or is there a course on cremation, what problem are we trying to fix and what problem do we need to fix?

As there was no further discussion, the Chair closed the hearing.

Hearing on HB2718 - an act concerning mortuary arts; relating to funeral and cemetery; merchandise agreements;

The next order of business was the hearing on HB2718 and again called on Ms. Correll to explain the bill. Her highlights included:

- this also concerns mortuary arts and has to do with a totally different subject and law;
- this is a statute that concerns funeral and cemetery merchandise, often identified as “preneed” and would simply raise the amount of the contract to be entered into from \$3,500 to \$5,000 that could be paid as the first funds paid out and set aside at the direction of the purchaser (intended to reflect the inflation and cost of funeral planning).

As there were no questions of Ms. Correll, the Chair called upon the first of two proponents of the bill, Ms. Pam Scott, Executive Director, Kansas Funeral Directors and Embalmers Association (KFDEA), who stated the \$3,500 has not been increased since 1998 and according to statistics released by Federated Funeral Directors of America for 2002, the cost of an average “Regular Adult Funeral” nationwide as \$5,211.21, which does not include the outside burial container, cemetery expenses, or cash advance items. She also stated that KFDEA does not believe the increase contained in this bill will have any adverse fiscal impact on the state of Kansas. A copy of her testimony is (Attachment 2) attached hereto and incorporated into the Minutes as referenced.

The second proponent was Mr. Dennis Priest, Program Administrator, Economics and Employment Support, Kansas Department of Social and Rehabilitation Services (SRS), who stated that under the current Medicaid eligibility are exempted as countable assets along with the value of any prepaid burial merchandise such as a casket or burial container and that many of their elderly consumers have or obtain such agreements to make sure there are sufficient resources to pay for their funeral and burial needs. So 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. A copy of his testimony is (Attachment 3) attached hereto and incorporated into the Minutes as referenced.

As there was no opponents, neutral, or written testimony, the Chair asked for questions from the Committee. Senators Salmans asked: what are we now paying for a funeral assistance program; when did we raise that; in the cases of counties and other places, where the expense isn’t covered, who picks this up; what do you see as an average cost of an estate, not private; why did you choose to set it below what the average is that can be set aside?

As there was no further discussion, the Chair closed the hearing.

Action on HB2717 - an act concerning mortuary arts; relating to licensure of crematory operations

Senator Salmans made a motion to send the bill out favorably. It was seconded by Senator Brownlee, as there was no discussion, the motion carried.

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Action on HB2718 - an act concerning mortuary arts; relating to funeral and cemetery

Senator Barnett made a motion to advance the bill favorably and was seconded by Senator Brungardt. As there was no discussion, the motion carried.

Review of a Balloon on HB2657 - an act concerning mortuary arts; relating to removal of dead bodies; educational requirements; examination and licensure; subpoenas; amending statutes and repealing sections

The Chair then announced that Mr. Furse had prepared a balloon on HB2657 after the hearing last week and asked Mr. Furse to explain. His highlights included:

- the amendment in Sec. 2 is a technical amendment, needing to specify what Board we are talking about here since this is a new section;
- on page 2, line 19, it says currently "beginning on July 1", and this will insert "on and after" and then it has been noted throughout the rest of the balloon, the policies used that these language changes have made;
- Sec. 1, if you remember during the hearing, the subject about dead human bodies being removed and taken to various places, several questions were raised during the hearing regarding this so language has been worked up and ran by Mr. Max Smith, Executive Secretary, Kansas State Board of Mortuary Arts, for his review and he did feel comfortable with the language;

(Mr. Furse) felt it needed some conditioning language to start out with, we may have other statutes that relate to this, we may have local, county, or state ordinances, so inserted, "Except as otherwise provided by law and in accordance with any applicable legal requirements."

(Mr. Furse) One thing comes immediately to mind, is the toe tagging requirement for certain people who have died of communicable diseases, and we can't just say they can be removed without putting some sort of conditioning language in the balloon like with any applicable legal requirement, so (he) tried to pick up what generally, other types of requirements may be out there with this initial lead-in language; then turned the language around a little bit to say, after "Except as otherwise provided a dead human body removed from the location of death shall be transported to a licensed funeral establishment, etc.", deleting on line 21, "or other location of final internment" and placing it at the end of the sentence so the University of Kansas medical center would be included with the other entities that have been enumerated;

Then the general provision in line 22, where "other location of final disposition" will be inserted. Mr. Smith suggested using "disposition" instead of "internment" as somewhat a less technical term;

So this language would be changed, beginning on line 16, to put new conditions in the bill to read, "Except as otherwise provided by law and in accordance with any applicable legal requirements in accordance with any legal requirements the dead human body *which is* removed from a location of death *shall be* transported and then the enumeration would occur;

- page 2, those areas that are noted on "Policy", the change here, current law requires thirty semester hours of mortuary arts, this change would lead the Board to determine those hours; also on page 2, there is a policy change that would leave to the board the passing score, in line 30, currently the passing score is 75% with a minimum of 70% in any one section for successful passage of examination, this would be changed by this bill to line 43, "*The Board by rules and regulations establishing the score for successful completion of the written examination.*";
- on page 3, lines 29 and 30, would change one of the grounds for disciplinary action. Currently the law is a conviction of a felony, and this would change it to a crime and delete the "moral turpitude" language. (He said) this generated several questions from the Committee.
- still on page 3, lines 33 through 36, "*incapacitated*" has been added to unfitness and another "Policy" change, the "Current law requires certification of a physician to unfitness" would be deleted under this proposed amendment;

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- on page 4, beginning on line 22, the certified copy of the record of another jurisdiction would be conclusive evidence of a licensure act in that jurisdiction against the license;
- page 5, in line five through 11, adds language three additional grounds for disciplinary action;
- on page 6, the subpoena language deleted in lines one through 13, is replaced by Sec. 2.

The Chair then asked if there were questions on Mr. Furse's proposed language. Senator Journey, Salmans, Barnett, Brownlee and Brungardt and Ms. Correll asked: was curious of the removal of the certified copy of another state's records, is it your interpretation that it would still be admissible in an administrative hearing, but not conclusive and if not conclusive evidence, question if you could get around the "here say exception" and would probably require bringing the original witnesses in from the other state; regarding page 2, line 19, "on or after," why not just say July 1; regarding the policy changes, in the case of an EMT or deputy sheriff finding a body, for example, in a blizzard, and cannot declare the body dead, does this affect or change that removal of the body, or are they still operating under the current EMS procedures; in a rural setting, dead bodies are taken to the morgue instead of emergency rooms, is this in violation of this legislature with this balloon; is the Board's disciplinary action public record; regarding finding a person incapacitated, how will the Board find that person unfit; and, expressing concern reading the bill, one page weakens the bill then the next page strengthens, it seems to go back and forth, does this make it a better bill or not and are all of these appropriate changes?

The Chair called upon Ms. Camille Noy, Attorney for KFDEA, who was able to give the Board's rationale to the policy changes (felony to crime - in order to catch misdemeanors, line 33 adding incapacitate - seemed more descriptive; "certified by a physician - to be deleted, physicians don't certify people; line 18 "certified copy" removed - other agencies do not certify copies of the record.) The Chair asked Ms. Noy, if just "copy" could be used and Senator Journey suggests "attested to" be inserted, so that someone in that office can swear that it is a true and accurate copy, eliminate selective editing. She also referred to the educational policy changes:

1) on page 2, regarding the requirement of 30 semester hours, why KFDEA wants this change as it reads, allows 30 or more hours and then they are striking it? Senator Brungardt offered it speaks to accreditation, to the educational process (at least an AA degree in mortuary science).

2) the passing score, (the Board uses an exam company that sets the score and if that changes the Board wants to set that by regulation so the Board can make any changes that would be necessary).

The Chair asked if further questions, Senator Brownlee said she wanted to make sure that what the Committee is doing in **HB2657** and **HB2717**, where we are not saying that a dead human body can arrive at a crematory unless it first passes through the licensed funeral establishment (both going in the same direction.) The Chair stated that they had worked everything out before bringing to Committee.

Action on HB2657 - an act concerning mortuary arts; relating to removal of dead bodies; educational requirements; examination and licensure; subpoenas; amending statutes and repealing sections

The Chair asked the Committee to turn to page 4 of the balloon. Senator Journey made a motion to replace the stricken language on lines 22 and 23 with "an attested copy of the record of the action of the other jurisdiction being presumptive evidence, thereof": It was seconded by Senator Barnett and the motion carried

Senator Journey made a motion that the amended language "crime" be stricken on page 3, line 27, and replaced with "felony" as originally drafted and on lines 29 and 30, the stricken language be reinserted with additional language to read as "or has been convicted of any offense involving moral turpitude or criminal desecration." It was seconded by Senator Brownlee.

Adjournment

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As it was going on 2:30 p.m., Senate session time, the meeting was adjourned.

The next meeting is scheduled for Wednesday, March 23, 2004.