

MORTUARY SCIENCE LICENSURE REQUIREMENTS

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House Bill 4437 (H-5) as referred to second committee

Sponsor: Rep. Rodney Wakemen

1st Committee: Regulatory Reform

2nd Committee: Ways and Means

Complete to 6-23-20

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4437 would amend Article 18 (Mortuary Science) of the Occupational Code to revise provisions pertaining to funeral establishment licenses and licenses for the practice of mortuary science. Among other things, the bill would do all of the following:

- Require passing both a state-developed examination and a nationally or internationally developed examination as a condition for licensure.
- Establish new conditions under which an individual licensed, or previously licensed, in another state would be eligible for a Michigan mortuary science license.
- Establish continuing education requirements for a mortuary science license renewal and allow an exception for long-time licensees.
- Revise the time period within which a change in ownership or location, or a change in a business entity or change in ownership of a business entity that owns a funeral establishment, must be reported to the Department of Licensing and Regulatory Affairs (LARA).
- Revise several provisions relating to conduct for which an individual would be subject to administrative penalties.

License to engage in the practice of mortuary science

The bill would amend the educational requirements for a license to engage in the practice of mortuary science to require that the individual do all of the following:

- Graduate from a three-year mortuary science program accredited by an accrediting agency that is recognized by the U.S. Secretary of Education as a specialized accrediting agency in funeral service or mortuary science.
- Satisfactorily pass all of the required parts of an examination administered and developed by a national or international association of funeral service licensing boards and approved by LARA and the Michigan Board of Examiners of Mortuary Science.
- Satisfactorily pass a Michigan examination developed and administered by or under the authority of LARA. (This would replace the current requirement of satisfactorily passing an examination approved by LARA and the board.)

The bill would delete a provision that allows an applicant to take the current state-approved examination in two parts.

The bill would also delete a provision that currently requires, for a funeral establishment that is a corporation or partnership, each active member of those entities, together with each individual whose name appears or is used in connection with the name of the entity, to be the holder of a license for the practice of mortuary science.

Individuals licensed in another state

Currently, LARA must issue a mortuary science license to an individual who holds a valid license in another state with requirements that are substantially equal to those of Article 18, if he or she meets certain conditions.

The bill would instead require LARA to issue a mortuary science license to an individual who holds or previously held a valid mortuary science license, or dual licenses as a funeral director and embalmer, in another state if he or she met certain conditions. The bill would also revise the conditions to require that the individual must do all of the following:

- Apply for a license to practice in this state. (This is current law.)
- Have held the license or licenses in the other state for at least five years.
- Have completed a mortuary science program accredited by an agency recognized by the U.S. Secretary of Education as a specialized accrediting agency in funeral service or mortuary science.
- Have satisfactorily passed all of the required parts of an examination administered and developed by a national or international association of funeral service licensing board and approved by LARA and the state board.

LARA could refuse to issue a mortuary science license to an individual licensed in another state based on evidence that his or her license in the other state had been suspended, revoked, or limited at any time.

Continuing education requirement

The bill would add a new section to require the holder of a license for the practice of mortuary science to successfully complete at least four hours of eligible continuing education courses (as determined by LARA) in each year of a license cycle, beginning the first complete license cycle after October 31, 2025. Compliance with the continuing education requirement would be a condition for renewing a license for the practice of mortuary science. The continuing education requirement would not apply to an individual who is the holder of a mortuary science license who has continuously held a valid license for at least 40 consecutive years, unless he or she were an individual designated as the licensed manager of a funeral establishment.

Not less than two of the four hours of the courses required in each year of a license cycle would have to involve one or more of the following subjects:

- Technical skills required for embalming and restorative art.
- Funeral ethics and funeral service best practices.
- Grief counseling.
- Occupational health and safety for funeral home workers.
- Communicable diseases, including transmission and sterilization techniques.
- Statutes and rules of this state relating to the practice of funeral directing.
- Prepaid funeral sales.
- Consumer protection, Federal Trade Commission Funeral Rule, and fair labor standards requirements.

If an individual received his or her initial license to engage in the practice of mortuary science after the beginning of the current license cycle for that license, LARA could prorate the required number of hours of continuing education the year of the license cycle in which the license is issued.

Transportation or storage of a dead human body

The holder of a license for the practice of mortuary science would have to supervise and be responsible for the transportation and storage of a dead human body. The licensee could designate an employee or other person to transport or store a dead human body.

The bill would delete a provision that specifies that it does not prevent the shipment of a dead human body intended for use for an anatomical purpose within the state if the body is designated by the shipper as intended for use for an anatomical purpose. Under the bill, this section of the act would not apply to any of the following:

- The transportation or storage of a dead human body that is the subject of an anatomical gift under Part 101 of the Public Health Code.
- The transportation of a dead human body by a county medical examiner.
- The removal of a dead human body from the place of death by police, fire, or other emergency personnel.

Unclaimed cremated remains

Currently, an individual licensed in the practice of mortuary science is immune from civil liability for the proper disposition of unclaimed cremated remains if proper disposition is made six months or longer after the date of cremation and at least 30 days after the date the required notice is sent. For the immunity to apply, the bill would require the funeral establishment to maintain and safeguard the unclaimed cremated remains until proper disposition. In addition, for immunity, one of the following conditions would have to apply:

- Disposition of the remains is made six months or longer after the date of cremation and, if written notice is required to be made to those having the right to make decisions relating to the disposition of the remains, at least 30 days after the date the notice is sent.
- Disposition is authorized by a special fiduciary or special personal representative under section 3206(8) of the Estates and Protected Individuals Code (EPIC).
- Disposition is authorized by a medical examiner under section 3206(9)(a) of EPIC.

Under the bill, written notice would not be required for a proper disposition of unclaimed cremated remains by transfer of the remains to any relative of the decedent made more than one year after the date of cremation or for any proper disposition of unclaimed cremated remains made more than two years after the date of cremation.

The bill would also revise the definition of “proper disposition” to include a transfer of unclaimed cremated remains to any relative of the decedent that occurs more than six months after the date of cremation as conduct that would constitute a proper disposition.

Ownership and management of a funeral establishment

A funeral establishment is required to be operated by a person who is the holder of a license for the practice of mortuary science and must conspicuously display at its entrance the name of the person licensed to conduct the establishment. The bill would delete a requirement that the name of the person owning the establishment be registered with LARA, as well as a provision that failure to make full and complete disclosure of the owners is grounds for license revocation.

Currently, a change in ownership or location of a funeral establishment automatically cancels its license. The bill would broaden the conduct that would trigger an automatic cancellation of

a license to include a change in business entity or change in ownership of a business entity that owns a funeral establishment. Instead of requiring a licensee to immediately report a change in ownership or location to LARA, the bill would require the licensee to report an ownership or location change not more than 30 days after the change. For the purposes of this provision, ***change in ownership*** would mean a change of the owners of a majority of shares of stock; a change of a majority of a business entity's members, officers, or directors; or a change in a sole proprietorship's or general partnership's owners.

Currently, the act prohibits a person from whose license has been revoked from operating or holding an interest in a funeral establishment. The bill would instead prohibit such an individual from owning or managing or holding an interest in a funeral establishment.

Continuity of business name

Currently, Article 18 specifies that it does not prevent a funeral establishment from using or continuing to use an otherwise lawful corporate or partnership name after the death or retirement of a member if each active member or employee is properly licensed under it.

The bill would delete this provision and instead would specify that a lawfully formed ***business entity*** licensed as funeral establishment could use or continue to use the licensed establishment name after the death or retirement of a member, officer, or director if the death or retirement is reported to LARA within 30 days and if the name of the licensed establishment was used before the death or retirement.

Business entity would mean an association, corporation, limited partnership, limited liability company, or common law trust or a combination of any of those and an individual.

Funeral establishment license requirements

An applicant for a funeral establishment license would have to disclose the ownership interests in the establishment as follows:

- If the owner is a trust, disclose the names and addresses of the beneficiaries.
- If the owner is a privately held corporation, disclose the names and addresses of all shareholders, officers, and directors.
- If the owner is publicly held corporation, disclose the names and addresses of the officers and directors and all shareholders holding a direct or indirect interest of greater than 5%.
- If the owner is a partnership or limited liability partnership, disclose the names and addresses of all partners, both general and limited.
- If the owner is a limited liability company, disclose the names and addresses of all members and managers.

Penalties

Article 6 of the act provides administrative sanctions, such as license revocation or a fine, that may be imposed for violations of the act. Currently, Article 18 lists numerous acts that could subject a person to penalties under Article 6. The bill would revise several of the prohibited actions as follows:

- Specify that using a casket or part of a casket previously used as a receptacle for or in connection with the burial or other disposition of a dead human body would not apply to a casket or part of a casket designed and manufactured for more than one use.

- Instead of referring to a violation of a state law affecting the handling, custody, care, or transportation of a dead body, the bill would subject a person to the penalties for violating specific sections of the Public Health Code or rules promulgated under those statutes, as well as sections 3206 to 3209 of EPIC.
- Specify that obtaining possession of or embalming a dead human body without first being expressly directed or authorized to do so by a relative of the decedent or a person entitled to custody would not apply to the embalming of a body if, in accordance with sections 3206 to 3209 of EPIC, reasonable efforts to obtain the authorization were made and more than 48 hours have elapsed since the decedent's death.
- Add as a violation failure to comply with the Prepaid Funeral and Cemetery Sales Act.

MCL 339.1801 et seq.

BRIEF DISCUSSION:

Perhaps the most significant provision proposed by HB 4437 is the establishment of a continuing education requirement. The current COVID-19 pandemic, which has taken the lives of over 5,000 Michigan residents, underscores the need for enhancing the education of those who handle the transportation and disposition of the deceased in a manner that is dignified and respectful, but also safe. How to keep family and friends safe in their time of mourning, as well as those caring for the body of a deceased, in the face of emerging pathogens, is a strong example of why additional education is needed for those in the mortuary sciences profession. Providing courses on ever-changing federal and state regulations, which can be complex, would help ensure compliance and hopefully avoid the horrific situation recently discovered in some funeral homes in the state in which bodies were not properly cared for and records not properly maintained. Michigan is currently one of only ten states that do not require continuing education courses as a requirement for license renewal.

The bill would also make numerous revisions to the mortuary sciences laws to increase oversight and accountability. For instance, the bill would enhance the duties for an individual regarding the disposition of cremated remains if the individual wishes to enjoy the immunity from civil liability that the act affords to those who follow proper disposition procedures. The bill would also modernize certain aspects of the mortuary sciences profession.

An earlier version of the bill would have required new applicants for a mortuary science license to have completed a bachelor's degree in any field of study in addition to the mortuary school. With ever-increasing challenges presented by emerging pathogens, changing social expectations, and increasing governmental oversight, many believe that completion of a bachelor's degree would better equip future mortuary science professionals with the critical thinking skills and broad-based education needed to better serve the needs of those facing the loss of a loved one.

FISCAL IMPACT:

House Bill 4437 would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs. The bill may increase administrative responsibilities for the department, though it is unclear whether any additional resources would be necessary. The bill would not have a fiscal impact on any other units of state or local government.

POSITIONS:

Representatives of the following entities testified in support of the bill (5-13-20):

- Michigan Funeral Directors Association
- Wayne State University

Service Corporation International (SCI) indicated a neutral position on the bill. (5-6-16-20)

The Department of Licensing and Regulatory Affairs indicated opposition to the bill.
(5-13-20)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.