

MORTUARY SCIENCE LICENSURE REQUIREMENTS

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House Bill 4437 as enacted
Public Act 265 of 2020
Sponsor: Rep. Rodney Wakeman
1st House Committee: Regulatory Reform
2nd House Committee: Ways and Means
Senate Committee: Regulatory Reform
Complete to 4-2-21

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

SUMMARY:

House Bill 4437 amends 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 does all of the following:

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

License to engage in the practice of mortuary science

The bill amends the educational requirements for a license to engage in the practice of mortuary science to require that the applicant meet all of the following:

- Serve as a resident trainee for one year under the personal supervision and instruction of the holder of a license for the practice of mortuary science. LARA may waive a portion of this requirement if the applicant has a baccalaureate degree from an accredited school, college, or university that is a satisfactory substitute for the resident training. (This is current law.)
- 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 replaces a previous requirement of satisfactorily passing an examination approved by LARA and the board.)
- Be of good moral character. (This is current law.)

The bill deletes a provision that allows an applicant to take the current state-approved examination in two parts. The bill also deletes 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 instead requires LARA to issue a license for the practice of mortuary science 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 meets certain conditions. The bill retains the current conditions and adds the following new ones:

- The individual must 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.
- The individual must 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.

In addition, LARA may 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 was suspended, revoked, or limited at any time.

Continuing education requirement

The bill adds 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 is a condition for renewing a license for the practice of mortuary science.

Not less than two of the four hours of the courses required in each year of a license cycle must 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 rules, and fair labor standards requirements.

If an individual receives 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 may prorate the required hours of continuing education for the license cycle year 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 must supervise and be responsible for the transportation and storage of a dead human body. The licensee may designate an employee or other person to transport or store a dead human body. The bill removes language

under which Article 18 did not prevent the shipment of a dead human body intended for use for an anatomical purpose within this state if designated by the shipper as intended for that use. Under the bill, this section of the act does 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

Previously under the act, an individual licensed in the practice of mortuary science was immune from civil liability for the proper disposition of unclaimed cremated remains if proper disposition was made six months or longer after the date of cremation and at least 30 days after the date the required notice was sent. For the immunity to apply, the bill additionally requires the funeral establishment to maintain and safeguard the unclaimed cremated remains until proper disposition. In addition, for immunity, one of the following conditions must 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 is not required for a proper disposition of unclaimed cremated remains by transfer 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 also revises the definition of “proper disposition” to include, as conduct that constitutes a proper disposition, a transfer of unclaimed cremated remains to any relative of the decedent that occurs more than six months after the date of cremation.

Ownership and management of a funeral establishment

Among other things, a funeral establishment must be managed by an individual who is the holder of a license for the practice of mortuary science. An individual whose license is revoked is prohibited from managing, directly or indirectly, or holding an interest in a funeral establishment. The bill additionally prohibits such an individual from directly or indirectly owning a funeral establishment.

Under the act, a *change in ownership* or location of a funeral establishment automatically cancels its license. The bill broadens the conduct that triggers 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 instead requires 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* means 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.

Continuity of business name

Previously, language specified that Article 18 did 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 was properly licensed under it.

The bill deletes this provision and instead specifies that a *business entity* licensed as funeral establishment can 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 the name was used before the death or retirement.

Business entity means 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

Under the bill, an applicant for a funeral establishment license must 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 actions that can subject a person to penalties under Article 6. The bill revises several of the prohibited actions as follows:

- Specifies 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 does 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 refers to violating specific sections of the Public Health Code or rules promulgated under those sections, as well as sections 3206 to 3209 of EPIC. The bill retains a provision that subjects a person to the act's sanctions for a violation of a municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of a dead human body.
- Specifies that sanctions that may be imposed for 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 do 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.
- Adds as a violation failure to comply with the Prepaid Funeral and Cemetery Sales Act.

The bill took effect March 24, 2021.

MCL 339.1801 et seq.

BRIEF DISCUSSION:

Arguments in support of the bill

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 thousands of 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. The need 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 argument for 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. Prior to the bill's enactment, Michigan was one of only ten states that did not require continuing education courses as a requirement for license renewal.

The bill also makes numerous revisions to the mortuary sciences laws to increase oversight and accountability. For instance, the bill enhances 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 also modernizes certain aspects of the mortuary sciences profession.

Argument in opposition to the bill

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 LARA. 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.

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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.