



Senate Fiscal Agency
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Senate Bill 696 (as enacted)
Senate Bill 1182 (as enacted)
House Bill 4437 (as enacted)
Sponsor: Senator Rick Outman (S.B. 696)
Senator Jim Stamas (S.B. 1182)
Representative Rodney Wakeman (H.B. 4437)
Senate Committee: Regulatory Reform
House Committee: Regulatory Reform (S.B. 696 & H.B. 4437)
Ways and Means (S.B. 696 & H.B. 4437)
Government Operations (S.B. 1182)

PUBLIC ACT 138 of 2020
PUBLIC ACT 334 of 2020
PUBLIC ACT 265 of 2020

Date Completed: 2-18-21

RATIONALE

Article 18 (Mortuary Science) of the Occupational Code governs the practice of mortuary science and funeral establishment in Michigan. Additional oversight is provided through administrative rules. Currently, Administrative Rule 339.18937 requires a funeral establishment to have in its direct employment a mortuary science licensee who is designated as the establishment's manager. The manager must be employed on a full-time basis and must be available at all times for funeral-related duties. The manager also must reside within one hour's normal commuting time from the establishment and may not manage more than one funeral establishment. Apparently, while these rules have served the industry well in the past, they currently are restrictive for communities that do not have many funeral services available, such as rural or small municipalities. Specifically, a funeral establishment that serves a small population may not generate enough revenue to support a full-time licensed funeral director. In order to ensure that rural and small communities continue to have access to funeral services, it was suggested that new provisions be enacted to relieve those licensees operating funeral establishments in those locations of the potential burden that the current rules may create.

Additionally, Michigan evidently is one of only a few states that does not require continuing education courses for mortuary science practitioners. Some people believed that recent cases of funeral service malpractice demonstrate the need for increased education standards. It was suggested that the initial education requirements for licensing be increased, and that mortuary science licensees be required to take continuing education courses, in order to ensure that all providers are knowledgeable with industry best practices.

CONTENT

Senate Bill 696 amended Article 18 of the Occupational Code to do the following:

- **Delete several existing requirements for funeral establishments and their owners.**
- **Require a manager or branch manager of a funeral establishment to ensure that it complies with all applicable laws.**
- **Prohibit a manger of a funeral establishment from residing more than 75 miles from that establishment.**
- **Prohibit an individual from managing more than one funeral establishment, unless he or she receives a waiver.**

- **Require a funeral establishment to notify the Department of Licensing and Regulatory Affairs (LARA) in writing when a new manager is appointed within 30 days after that appointment.**
- **Require the Director of LARA to receive and approve or deny requests for waivers to allow an individual to act as the manager of two funeral establishments.**
- **Prescribe the waiver process for a person who requests to act as the manager of two funeral establishments.**

Senate Bill 1182 amended the State License Fee Act to modify the occupational license fees for mortuary science, funeral establishment, funeral director, and resident trainee.

House Bill 4437 amends Article 18 of the Occupational Code to do the following:

- **Prescribe new requirements that an individual wishing to be licensed to practice mortuary science must meet in order to receive a license, including completing an accredited mortuary science program and passing an approved examination.**
- **Prescribe additional requirements that an individual who holds or previously held a valid mortuary science license, or dual licenses as a funeral director and embalmer, in another state must meet in order to receive a license.**
- **Require a licensee to successfully complete at least four hours of eligible continuing education courses in each year of a license cycle, beginning the license cycle after October 31, 2025.**
- **Require at least two of the four continuing education hours to involve one or more specified subjects, including funeral ethics and best practices.**
- **Require a licensee to supervise and be responsible for the transportation and storage of a dead human body.**
- **Require an applicant for a funeral establishment license to disclose certain ownership interests in the funeral establishment.**
- **Allow a funeral establishment to continue to use the name of licensed funeral establishment after the death or retirement of a member, officer, or director if certain requirements are met.**
- **Require a funeral establishment to report a change in ownership or location to the Department of Licensing and Regulatory Affairs (LARA) within 30 days of the change.**
- **Modify various provisions pertaining to a licensee's immunity from civil liability.**
- **Modify various provisions relating to conduct for which an individual is subject to administrative penalties.**

Senate Bill 696 took effect on October 6, 2020. Senate Bill 1182 took effect on December 29, 2020. House Bill 4437 will take effect on March 23, 2021.

Senate Bill 696

Article 18 of the Occupational Code requires a funeral establishment to be managed by an individual who is the holder of a license for the practice of mortuary science.

Previously, the establishment had to have conspicuously displayed at its entrance the name of the person licensed to conduct the establishment. The name of the person owning the funeral establishment had to be registered with LARA. Failure to make full and complete disclosure of the owners was grounds for revocation of the establishment license. The bill deleted these provisions.

Under the bill, all of the following apply to the ownership and management of a funeral establishment:

- The manager must ensure that the funeral establishment complies with all applicable laws.
- A funeral establishment must notify LARA in writing of the name of the individual appointed as the manager of the funeral establishment and conspicuously display the name of the manager at the entrance of the funeral establishment.

- A manager of a funeral establishment may not reside more than 75 miles from that funeral establishment.
- Except as otherwise provided below, an individual may not manage more than one funeral establishment.
- If a new manager is appointed for a funeral establishment, the establishment must notify LARA in writing of the new manager's name within 30 days after the date of his or her appointment.

The Director of LARA must receive and approve or deny requests for waivers to allow an individual to act as the manager of two funeral establishments. The prospective manager must request the waiver, and the request must include the following:

- The prospective manager's name and mortuary science license number.
- The name and license number of each funeral establishment affected.
- Documentation supporting the existence of the factors listed below.

The Director may not grant a waiver unless all of the following factors are met:

- The funeral establishments are located in the same county or contiguous counties.
- The population density of the county in which each of the funeral establishments is located is less than the population density for the State, based on data from the most recent decennial census.
- The funeral establishments are located within 90 miles of each other.

If the waiver is denied, the Director must send a written notice of the denial and the reasons for the denial to the individual who requested the waiver. The Individual could appeal the denial to the Board of Examiners in Mortuary Science in the manner provided for in Section 515.

In addition, the bill requires a branch establishment manager to ensure that the establishment complies with all applicable laws.

Senate Bill 1182

Previously, the State License Fee Act prescribed the following license fees:

- Mortuary science, if paid after September 30, 2023, \$30.
- Mortuary science, beginning October 1, 2003, through September 30, 2023, \$40.
- Funeral establishment, \$55.
- Funeral director, if paid after September 30, 2023, \$30.
- Funeral director, beginning October 1, 2003, through September 30, 2023, \$40.
- Resident trainee, if paid after September 30, 2023, \$15.
- Resident trainee, beginning October 1, 2003, through September 30, 2023, \$30.

Under the bill, the license fees, instead, are as follows:

- Mortuary science, beginning October 1, 2003, through September 30, 2021, \$40.
- Mortuary science, if paid after September 30, 2021, \$77.50.
- Mortuary science, if paid after September 30, 2023, \$115.
- Mortuary science, if paid after September 30, 2025, \$152.50.
- Funeral establishment, beginning October 1, 2003, through September 30, 2021, \$55.
- Funeral establishment, if paid after September 30, 2021, \$107.50.
- Funeral establishment, if paid after September 30, 2023, \$160.
- Funeral establishment, if paid after September 30, 2025, \$212.50.
- Funeral director, \$30.
- Resident trainee, \$30.

House Bill 4437

License to Practice Mortuary Science

Currently, the Code requires LARA to issue a license to engage in the practice of mortuary science to an individual who meets all of the following:

- Served 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.
- Graduated from a three-year course in mortuary science at an accredited school, college, or university.
- Satisfactorily passes an examination approved by LARA and the Michigan Board of Examiners in Mortuary Science.
- Is of good moral character.

The bill, instead, requires LARA to issue a license to an individual who meets all of the following:

- Served 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.
- Graduated from a three-year course in mortuary science at an accredited school, college, or university that was accredited by an accrediting agency recognized by the US Secretary of Education as a specialized accrediting agency in funeral service or mortuary science.
- Satisfactorily passes 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 Board.
- Satisfactorily passes a Michigan examination developed and administered by or under the authority of LARA.
- Is of good moral character.

The Code permits an applicant to take the examination described above in two parts, one part after completing the prescribed education and one part after completing the prescribed education and the service of resident training. The bill deletes this provision.

License Reciprocity

The Code requires LARA to issue a license for the practice of mortuary science to an individual who holds a valid license in another state that has substantially equal requirements to the requirements under Article 18 if he or she meets all of the following:

- Applies for a license to engage in the practice of mortuary science in Michigan.
- Files with LARA a certified statement from the examining board of the state in which the applicant holds a license that shows the basis on which the license was granted, and whether that board has suspended, revoked, or limited the license.
- Passes an examination approved by LARA and the Board that tests the individual's knowledge of law relating to the practice of mortuary science in the State.

Under the bill, the Department must 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 all of the following, in addition to the requirements currently prescribed in the Code:

- Completed a mortuary science program that was accredited by an agency recognized by the US Secretary of Education as a specialized accrediting agency in funeral service or mortuary science.
- 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 Board of Mortuary Examiners.

The Department may refuse to issue a mortuary science license to an individual who is 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 will require a licensee to successfully complete at least four hours of eligible continuing education courses in each year of a license cycle, beginning the first complete license cycle after October 31, 2025. (The licensing cycle for a mortuary science licensee is two years.)

All of the following apply to the continuing education requirement:

- The Department must determine whether a continuing education course is an eligible course.
- If an individual receives his or her initial license after the beginning of the current licensing cycle for that license, LARA may prorate the number of hours of eligible continuing education that licensee must complete for the year of the license cycle in which the license is issued.
- Compliance with the continuing education requirement is a condition to further renewal of a license.

Additionally, at least two of the four required hours of eligible continuing education courses 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 best practices.
- Grief counseling.
- Occupational health and safety for funeral home workers.
- Communicable diseases, including transmission and sterilization techniques.
- Funeral service best practices.
- Michigan statutes and rules pertaining to the practice of funeral directing.
- Prepaid funeral sales.
- Consumer protection, Federal Trade Commission funeral rule, and Fair Labor Standards requirements.

Transportation & Storage of Dead Human Bodies

The bill requires a licensee to 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.

Section 1807 specifies that Article 18 does not prevent the shipment of a dead human body intended for use for an anatomical purpose within the State if that body is designated by the shipper as intended for anatomical purpose. The bill deletes this provision. Instead, under the bill, Section 1807 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.
- 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.

Funeral Establishment License

The Code allows a person to engage in the practice of mortuary science only at a fixed location. A person may not open or maintain a place for practice or hold itself out as engaging in the practice of mortuary science, without an establishment license issued by LARA. An establishment license is issued for a specific location only.

Under the bill, an applicant for an establishment license must disclose ownership interests in the funeral establishment as follows:

- If the owner is a trust, the applicant must disclose the names and addresses of the beneficiaries.
- If the owner is a privately held corporation, the applicant must disclose the names and addresses of all shareholders, officers, and directors.
- If the owner is a publicly held corporation, the applicant must disclose the names and addresses of the officers and directors and all shareholders holding a direct or indirect interest of greater than 5.0%.
- If the owner is a partnership or limited liability partnership, the applicant must disclose the names and addresses of all partners.
- If the owner is a limited partnership or limited liability limited partnership, the applicant must disclose the names and addresses of all partners, both general and limited.
- If the owner is a limited liability company, the applicant must disclose the names and addresses of all members and managers.

Funeral Home Ownership & Operation

The Code requires a funeral establishment to be operated by a person who holds a license for the practice of mortuary science. The establishment must have conspicuously displayed at its entrance the name of the person licensed to conduct the establishment.

The name of the person owning the funeral establishment must be registered with LARA. Failure to make full and complete disclosure of the owners is grounds for the revocation of the establishment license. The bill deletes this provision.

Funeral Establishment Name

Under the Code, an individual whose name appears in the name of a funeral establishment is considered as actively engaged in the practice of funeral director or the practice of mortuary science and must be the holder of a license for the practice of mortuary science.

If a funeral establishment is a corporation or partnership, each active member of the corporation or partnership, together with each individual whose name appears or is used in connection with the name of the corporation or partnership, is the holder of a license for the practice of mortuary science. Article 18 may 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 of employee is properly licensed. The bill deletes these provisions.

Instead, the bill allows a business entity that is licensed as a funeral establishment to continue to use the licensed funeral 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 licensed funeral establishment name is used before the death or retirement of the member, officer, or director. "Business entity" means a person described in Section 105(5)(b) or (c), except a sole proprietorship or general partnership. (That section defines a "person" as a sole proprietorship, partnership, association, corporation, limited liability company, or common law trust.)

Change in Ownership, Location

The Code specifies that a change in ownership or location of a funeral establishment automatically cancels its license. A licensee immediately must report a change in ownership or location to LARA.

Under the bill, a change in ownership of a business entity that owned a funeral establishment also automatically cancels a funeral establishment's license. Also, a licensee must report a change in ownership or location, or a change in ownership of a business entity that owns a funeral establishment to LARA within 30 days after the change.

"Change in ownership" means a change of the owners of a majority shares of stock, a change of a business entity's members, shareholders, officers, or directors, or a change in a sole proprietorship's general partnership's owners.

Immunity from Civil Liability

Under the Code, an individual licensed to practice mortuary science is immune from civil liability for the proper disposition of unclaimed cremated remains if the proper disposition was made six months or longer after the date of cremation and at least 30 days after the date the notice (described below) is sent.

Instead, under the bill, an individual licensed to practice mortuary science is immune from civil liability for the proper disposition of unclaimed cremated remains if the funeral establishment maintains and safeguards the unclaimed cremated remains until proper disposition of the remains and any of the following are met:

- The disposition of the unclaimed cremated remains is made six months or longer after the date of cremation and, if notice is required, at least 30 days after the date the notice is sent.
- The disposition is authorized by a special fiduciary or special personal representative.
- The disposition is authorized by the medical examiner for the county where the decedent is domiciled at the time of his or her death.

The Code defines "proper disposition" as interment, entombment, or inurnment of unclaimed cremated remains in a cemetery in the State. In the case of the unclaimed cremated remains of a veteran of the US Armed Forces, proper disposition includes the interment, entombment, or inurnment in a cemetery designated solely for veterans by the US Department of Veterans Affairs or by the Michigan Department of Veterans Affairs. Under the bill, "proper disposition" also means a transfer of unclaimed cremated remains to any relative of the decedent that occurred more than six months after the date of cremation.

The Code requires a funeral director claiming immunity to make reasonable efforts to provide written notice of intent to make proper disposition of the unclaimed cremated remains to the people having the right to make decisions relating to the disposition of a decedent's body. Reasonable efforts include mailing the notice to the last known address of that person.

Under the bill, written notice is not required for either of the following:

- A proper disposition of unclaimed cremated remains by the transfer of the remains to any relative of the decedent that is made more than one year after the date of cremation.
- Any proper disposition of unclaimed cremated remains that is made more than two years after the date of cremation.

Penalties

Under the Code, a person is subject to the penalties of Article 6 if the person uses a casket or part of a casket that previously has been used as a receptacle for, or in connection with, the burial or other disposition of a human body. Under the bill, this provision would not apply to a casket or part of a casket that was designed and manufactured for more than one use.

Also, under the Code, a person is subject to the penalties of Article 6 for a violation of State law or a municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of a dead human body. Instead, under the bill, a person is subject to the penalties of Article 6 for a violation of any of the following:

- Sections 2652, 2653, 2659, 2663, 2836, 2842, 2843, 2848, 2850, 2851, 2853, or 2854 of the Public Health Code, or rules promulgated under those sections.
- Sections 3206 or 3209 of the Estates and Protected Individuals Code (EPIC).

-- A municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of a dead human body.

(Sections 2652, 2653, 2659, 2663, 2836, 2842, 2843, 2848, 2850, 2851, 2853, or 2854 of the Public Health Code generally pertain to the following, respectively: receiving dead human bodies or parts of dead human bodies designated for scientific use or allocated to hospitals or educational institutions for use in educational instruction; the disposition of an unclaimed dead human body; the adoption of standards for the transportation, reception, preservation, storage, records, and allocation of unclaimed bodies or parts; the unlawful disposition, use, or sale of an unclaimed dead human body; the disposal of fetal remains; death registrations; reporting of a death by a funeral director; ascertaining if a deceased person was a veteran of the US Armed Forces; the authorization for final disposition of a dead human body or fetus; the interment or other disposition of a dead human body or fetus; requests for a permit for the disinterment of a dead human body; permits for the disinterment and reinterment of a dead human body; and violations for the failure to dispose of fetal remains resulting from an abortion or failing to obtain the proper authorization for final disposition of a dead human body.)

Under Section 3206 of EPIC, subject to Public Act 181 of 1953 (which requires a county medical examiner to investigate the cause and manner of an individual's death under certain circumstances) and Part 28 (Vital Records) and Article 10 (Anatomical Gifts and Disposition of Human Body Parts) of the Public Health Code, a person with priority under Section 3206 or acting under other provisions of that section has the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body, including decisions about cremation and the right to possess cremated remains. Section 3209 of EPIC generally prescribes circumstances under which a funeral establishment, holder of a license to practice mortuary science, cemetery, or crematory is not subject to civil liability.)

The Code also specifies that a person is subject to the penalties of Article 6 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. Under the bill, this provision would not apply to the embalming of a dead human body if, in accordance with Sections 3206 and 3209 of EPIC, reasonable efforts had been made but were not successful and more than 48 hours had elapsed since the decedent's death.

Under the bill, a person also is subject to the penalties of Article 6 for failure to comply with the Prepaid Funeral and Cemetery Act.

MCL 339.1801 & 339.1809 (S.B. 696)
338.2243 (S.B. 1182)
339.1801 et al. (H.B. 4437)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Local access to funeral and memorial services is essential for Michigan residents. However, population shifts, market trends, and State rules are threatening funeral establishments located in rural and small municipalities. The requirement for each funeral establishment to have a full-time, designated licensed manager who always is available and is restricted to operating only one establishment ensures proper and quality oversight over that establishment. However, for those locations in Michigan where funeral services are used less frequently, these rules may be difficult to follow, as the establishment may not generate sufficient revenue to cover the costs associated with employing a full-time funeral director assigned to that location. By providing a licensee the ability to petition the State Board of Examiners in Mortuary Science to manage a second facility, Senate Bill 696 provides those licensees the opportunity to generate more revenue and continue offering services to the communities in which their funeral establishments are located.

Supporting Argument

Many changes have occurred in the mortuary science profession over the years, and funeral directors and embalmers must be ready to meet these changes. The funeral industry has gone from providing a relatively simple service to one that requires navigating a complex landscape of public health concerns, technology, family dynamics, legal issues, and professional integrity. Many of these issues were never contemplated before, so House Bill 4437 makes the changes necessary to reflect the profession of today. In addition, protecting public health is an integral function of mortuary science practitioners. These providers are the individuals to handle human remains, so well-educated professionals are needed to know how to properly handle, transport, disinfect, and treat remains. Requiring continuing education courses provides critical and necessary improvements to ensure that the industry is protecting public health.

Recently, there have been several reported incidents in which funeral homes have been fined, had licenses suspended or revoked, or were even shut down because of inadequate storage and treatment of bodies and cremated remains, unsanitary conditions, and improper handling of funds. The bill helps ensure that all mortuary science licensees are familiar with general best practices about the proper storage of remains, embalming, restorative arts, and fiduciary aspects of the industry. Funeral service providers care for the public at a time when people often are at their most vulnerable, so enhanced standards strengthen competent and ethical service to the public.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Senate Bill 696

The bill will have no fiscal impact on State or local government.

Senate Bill 1182

The bill will have a significant positive fiscal impact on LARA and no fiscal impact on local units of government. The Department generally has spent more funds for the regulation of mortuary science licensing than it has received in fee revenue from those licensees. These fees are deposited in the Licensing and Regulation Fund. Mortuary Science and Funeral Establishment licenses make up about 96.0% of all licenses issued in in the mortuary science category in a given cycle.

For fiscal year 2018-19, the Department estimated a revenue shortfall related to mortuary science licenses of approximately \$87,000. Under the bill, the Department estimates that the scheduled fee increases will decrease this shortfall each licensing cycle and ensure a positive Fund balance in the 2023 licensing year. Departmental projections suggest that under the new fee structure, revenue will exceed expected expenditures by approximately \$44,000 in that licensing cycle. These projections assume a standard annual cost increase of 3.0%. Without new fee increases, the revenue shortfall would have continued to increase.

House Bill 4437

The bill likely will have a minor negative fiscal impact on LARA and no fiscal impact on local units of government. The Department may experience some administrative costs related to monitoring compliance with the new licensing requirements; however, these costs likely will not require additional appropriations.

Fiscal Analyst: Elizabeth Raczowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.