

As Approved by the Governor
As Amended by the Conference Committee & Approved by the House and Senate
As Amended by House Committee
As Amended by Senate Committee
Session of 2001

SENATE BILL No. 214

By Committee on Public Health and Welfare

AN ACT concerning the Kansas state board of mortuary arts; regulating crematories; amending K.S.A. 65-1723 and 65-1732 and K.S.A. 2000 Supp. 65-1727 and repealing the existing sections.

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

New Section 1. As used in this act, unless the context clearly shows otherwise:

(a) "Alternative container" means a receptacle, other than a casket, in which dead human bodies are transported to the crematory and placed in the cremation chamber for cremation. An alternative container shall be (1) composed of readily combustible materials suitable for cremation, (2) able to be closed in order to provide a complete covering for the dead human bodies, (3) resistant to leakage or spillage, (4) rigid enough for handling with ease, and (5) able to provide protection for the health, safety and personal integrity of crematory personnel.

(b) "Authorizing agent" means a person legally entitled to authorize the cremation and final disposition of specific dead human bodies as defined in K.S.A. 2000 Supp. 65-1734, and amendments thereto.

(c) "Board" means the state board of mortuary arts.

(d) "Cremated remains" means all human remains recovered after the completion of the cremation of a dead human body, which may possibly include the residue of any foreign matter including casket material, bridgework or eyeglasses, that was cremated with the dead human body.

(e) "Cremation" means the reduction of a dead human body to essential elements through direct exposure to intense heat and flame and the repositioning or movement of the body during the process to facilitate reduction, the processing of the cremated remains after removal from the cremation chamber, placement of the processed remains in a cremated remains container and release of the cremated remains to an appropriate party.

(f) "Cremation chamber" means the enclosed space within which the cremation of a dead human body is performed. Such chambers shall be used exclusively for the cremation of human remains.

(g) "Crematory" means a business premises that houses the cremation chamber and holding facility where dead human bodies are cremated. A crematory shall be maintained at a fixed and specific street address.

(h) "Crematory operator in charge" means the crematory operator who is responsible

to ensure that the crematory's license is current and that the licensed crematory is in compliance with the laws and regulations of this state. Nothing in this definition shall relieve other persons involved with a cremation from complying with state and federal laws and regulations.

(i) "Dead human body" means a lifeless human body or such parts of a human body or the bones thereof from the state of which it reasonably may be concluded that death recently occurred.

(j) "Funeral director" means a person who holds a current license as funeral director issued by the board.

(k) "Funeral establishment" means a funeral establishment or branch establishment as licensed by the board.

(l) "Holding facility" means an area within or adjacent to a licensed crematory designated for the retention of dead human bodies prior to the act of cremation that shall:

- (1) Comply with any applicable public health statute, regulation or ordinance;
- (2) preserve the dignity of the dead human body;
- (3) recognize the integrity, health and safety of the crematory's personnel operating the crematory; and
- (4) be secure from access by anyone other than authorized personnel.

(m) "Potentially hazardous implant" means any device previously placed within the now deceased human body that would result in potential harm or damage at any time during the cremation process.

(n) "Temporary container" means a receptacle for cremated remains, usually composed of cardboard, plastic or similar material, that can be closed in a manner that prevents the leakage or spillage of the cremated remains or the entrance of foreign material, and is a single container of sufficient size to hold the cremated remains.

(o) "Urn" means a receptacle designed to encase the cremated remains.

New Sec. 2. (a) No person shall operate a crematory to cremate a dead human body or cause any dead human body to be cremated unless the crematory is licensed under this act.

(b) Any building used as a crematory shall comply with all applicable local and state building codes, zoning laws, ordinances and environmental standards. A crematory shall have, on site, a motorized mechanical device for processing cremated remains either in the building or adjacent to it and a holding facility for the retention of dead human bodies awaiting cremation. The holding facility shall be secure from access by anyone except authorized personnel of the crematory, shall preserve the dignity of the dead human bodies and shall protect the health and safety of the crematory personnel.

(c) All applications for licensure as a crematory shall be on forms furnished and prescribed by the state board of mortuary arts.

New Sec. 3. (a) The crematory operator in charge shall supervise the licensed crematory on a full-time or a part-time basis and perform some other duties relating to the supervision of a licensed crematory as prescribed by the board by rules and regulations.

(b) No crematory or crematory operator in charge shall cremate or cause to be

cremated any dead human body until it has received:

(1) A cremation authorization form signed by an authorizing agent. The written authorization shall include:

(A) The identity of the dead human body and the time and date of death;

(B) the name of the funeral director or assistant funeral director and the funeral establishment or branch establishment, or the authorizing agent, that obtained the cremation authorization;

(C) notification as to whether the cause of death occurred from a disease declared by the department of health and environment to be infectious, contagious, communicable or dangerous to the public health;

(D) the name of the authorizing agent and the relationship between the authorizing agent and the decedent;

(E) authorization for the crematory to cremate the dead human body;

(F) a representation that the dead human body does not contain a pacemaker or any other material or implant that may be potentially hazardous or cause damage to the cremation chamber or the person performing the cremation;

(G) the name of the person authorized to receive the cremated remains from the crematory; and

(H) the signature of the authorizing agent, attesting to the accuracy of all representations contained on the cremation authorization form.

(2) A completed and executed coroner's permit to cremate, as is provided in K.S.A. 65-2426a and amendments thereto, indicating that the dead human body is to be cremated.

New Sec. 4. (a) No body shall be cremated with a pacemaker or other potentially hazardous implant in place. The authorizing agent for the cremation of the dead human body shall be responsible for informing the licensed funeral director, assistant funeral director, embalmer or crematory operator in charge about a known pacemaker or other potentially hazardous implant. The authorizing agent shall be responsible for ensuring that any known pacemaker or hazardous implant is removed before delivery of the dead human body to the crematory. Bodies with pacemakers or hazardous implants in the custody of a crematory operator shall have any pacemaker or hazardous implant removed by an embalmer at a funeral establishment or branch establishment with an embalming preparation room unless the removal is to take place at a medical facility by the appropriate medical personnel.

(b) A crematory shall hold dead human bodies, prior to their cremation, according to the following provisions of this subsection:

(1) Whenever a crematory is unable to cremate the dead human body immediately upon taking custody thereof, the crematory operator in charge shall place the dead human body in a refrigeration facility at 40 degrees fahrenheit or less, unless the dead human body has been embalmed, or shall store the dead human body in a cremation container at a funeral establishment or branch establishment; and

(2) a crematory operator in charge shall not be required to accept for holding a cremation container from which there is any evidence of leakage of body fluids from the dead

human body therein.

(c) No unauthorized person shall be permitted in the crematory area while any dead human body is in the crematory area awaiting cremation, being cremated or being removed from the cremation chamber.

(d) The simultaneous cremation of more than one dead human body within the same cremation chamber is prohibited without specific written authorization to do so from all authorizing agents for the dead human bodies to be so cremated. Such written authorization shall exempt the crematory operator in charge from all liability for the comingling of the cremated remains during the cremation process.

(e) The crematory shall maintain an identification system that will insure that the cremated remains can be identified, as indicated on the cremation authorization form, throughout all phases of the cremation process.

(f) Upon completion of the cremation, and insofar as practicable, all of the recoverable residue of the cremation process shall be removed from the cremation chamber. If possible, the noncombustible materials or items shall be separated from the cremated remains and disposed of, in a lawful manner, by the crematory. The cremated remains shall be reduced by motorized mechanical device to granulated appearance appropriate for final disposition.

(g) Cremated remains shall be packed as follows:

(1) The cremated remains with proper identification shall be placed in a temporary container or urn, unless specific written authorization has been received from the authorizing agent or as provided in paragraph (2) of this subsection. The temporary container or urn contents shall be packed with clean packing materials;

(2) if the cremated remains will not fit within the dimensions of a temporary container or urn, the remainder of the cremated remains shall be returned to the authorizing agent or its representative in a separate container attached to the first container or urn identifying such containers as belonging together;

(3) when a temporary container is used to return the cremated remains, that container shall be, at a minimum, a cardboard box with all seams taped closed to increase the security and integrity of that container. The outside of the container shall be clearly identified with the name of the crematory and an indication that the container is a temporary container; and

(4) if the cremated remains are to be shipped, the temporary container or designated receptacle ordered by the authorizing agent shall be securely packed in a suitable, sturdy, non-fragile container and sealed properly. Cremated remains shall be shipped only by a method which has an internal tracing system available and which provides a receipt signed by the person accepting delivery.

New Sec. 5. (a) An authorizing agent signing a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth in such cremation authorization form, including the identity of the deceased whose remains are sought to be cremated and such authorization agent's authority to order such cremation. Any person signing a cremation authorization form as an authorizing agent shall be personally and individually liable for all damage occasioned thereby and resulting therefrom. A crematory operator in charge or a funeral director may rely upon the representations of the authorizing agent in the cremation authorization form.

(b) A funeral director, assistant funeral director or crematory operator in charge shall have the authority to arrange the cremation of a dead human body upon the receipt of a cremation authorization form signed by an authorizing agent. A funeral director, assistant funeral director or crematory operator in charge who pursuant to a cremation authorization arranges a cremation, cremates a dead human body then releases or disposes of the cremated remains shall not be liable for such acts.

(c) A funeral director, assistant funeral director or crematory operator in charge who refuses to arrange a cremation, to accept a dead human body or to perform a cremation shall not be liable for refusing to arrange, to accept the dead human body or to perform the cremation until they receive a court order or other suitable confirmation that the cause of the refusal has been settled. Circumstances causing such a refusal may include:

- (1) Awareness of a dispute concerning the cremation of the dead human body; or
- (2) a reasonable basis for questioning any of the representations made by the authorizing agent; or
- (3) any other lawful reason.

New Sec. 6. If an authorizing agent informs the funeral director, assistant funeral director or the crematory operator in charge on the cremation authorization form of the presence of a pacemaker or hazardous implant in the dead human body such informed personal shall be responsible for ensuring that all necessary steps have been taken to remove the pacemaker or hazardous implant. Should a funeral director or assistant funeral director who delivers the dead human body to the crematory after being informed that a pacemaker or hazardous implant is within the dead human body and fails to ensure that the pacemaker or hazardous implant has been removed from the dead human body pursuant to subsection (b) of section 3 and amendments thereto, prior to delivery, and should the dead human body be cremated with the pacemaker or hazardous implant, then such funeral director or assistant funeral director who delivered the dead human body to the crematory shall be liable for all resulting damages.

New Sec. 7. (a) The state board of mortuary arts shall adopt rules and regulations for the administration and implementation of this act. Such rules and regulations shall include the conditions under which dead human bodies of persons who died from an infectious, contagious, communicable or dangerous disease can be transported from any place in the state to a crematory for the purpose of cremation; shall establish minimal standards of sanitation, required equipment and fire protection for all crematories as deemed necessary for the protection of the public.

(b) A crematory operator in charge may adopt reasonable policies, not inconsistent with this act or rules and regulations adopted by the board.

(c) The state board of mortuary arts may refuse to issue or renew a license or revoke or suspend a license for the crematory, upon a finding that the crematory operator in charge:

- (1) Has maintained or operated a building or structure within the state as a crematory in violation of the provisions of this act or the rules and regulations adopted by the board of mortuary arts;

(2) has performed a cremation without a cremation authorization form signed by an authorizing agent;

(3) has made any misleading, deceptive, untrue or fraudulent statements in applying for or securing an original or renewal license;

(4) has been convicted of a felony or an offense of moral turpitude, and has not demonstrated to the board's satisfaction that such crematory operator in charge has been sufficiently rehabilitated to warrant the public trust;

(5) has violated any law, ordinance or rule and regulation affecting the handling, custody, care or transportation of dead human bodies or cremated remains;

(6) has been rendered unfit to operate a crematory by reason of illness, alcohol, chemicals or other types of substances, or as a result of any mental or physical condition;

(7) has failed or refused to properly protect or guard against contagious, communicable or infectious disease, or the spreading thereof;

(8) has or such person's agent, employee or representative has advertised, solicited or sold merchandise or services in a manner which is fraudulent, deceptive or misleading in form or content;

(9) has been found by a court of competent jurisdiction to be mentally ill, mentally disabled, not guilty by reason of insanity or incompetent to stand trial by a court of competent jurisdiction;

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

(11) has failed to report to the board any adverse action taken against the crematory operator in charge or the crematory by another state or licensing jurisdiction, professional association or society, governmental agency, law enforcement agency or a court;

(12) has knowingly submitted any misleading, deceptive, untrue or fraudulent representation on a claim form, bill, statement or similar information to an authorizing agent, consumer or representative of the board;

(13) has had a license to operate a crematory revoked or suspended, or had other action taken against oneself or 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;

(14) has violated any rules and regulations adopted by the board or any state or federal law related to the practice of operating a crematory; or

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

(d) 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.

(e) A violation of this section or any provision of this act is hereby declared to be a class A nonperson misdemeanor.

New Sec. 8. This act shall take precedence over any conflicting Kansas laws, other than state environmental laws, that govern the handling and disposition of dead human bodies for cremation and cremated remains.

New Sec. 9. (a) The crematory operator in charge of a crematory, located or doing business within the state, shall apply for and obtain a crematory license from the board for each crematory.

(b) An application for a new license is required if the crematory has a change in ownership, name, location or a change in the crematory operator in charge. Such application shall be made to the board at least 30 days prior to the change of ownership, name or location or change in the crematory operator in charge.

(c) The crematory license fee and crematory license renewal fee shall be fixed by the board under K.S.A. 65-1727 and amendments thereto. The disposition of all funds collected under the provisions of this act shall be in accordance with the provisions of K.S.A. 65-1718 and amendments thereto.

(d) A crematory license shall expire every two years on a date established by the board. To continue operation of a crematory, a crematory operator in charge shall submit a biennial renewal application form and the crematory license renewal fee to the board before the expiration date of such license.

(e) A crematory license shall be judged delinquent on midnight of the expiration date and may only be renewed after that day by payment of a renewal fee and a reinstatement fee in an amount equal to the renewal fee.

(f) It is unlawful for any person who is not an operator in charge of a crematory under this act to operate a crematory or hold oneself out as operating a crematory.

(g) The Kansas university medical center shall be exempt from this statute for the purpose of cremating remains donated for dissecting, demonstrating or teaching purposes.

Section 10. K.S.A. 65-1723 is hereby amended to read as follows: 65-1723. The state board of mortuary arts shall have the power to adopt and enforce all necessary rules and regulations not inconsistent with this act for examining and licensing funeral directors and assistant funeral directors, issuing licenses by reciprocity, establishing ethical standards and practices and regulating the general practice of funeral directing **and cremation**. The board shall have the power to inspect funeral establishments, ~~including branch establishments~~ **and crematories**, and to require that funeral establishments, ~~including branch establishments~~ **and crematories**, be maintained, operated and kept in a clean and sanitary condition in accordance with the provisions of this act, rules and regulations of the board and ~~the~~ **any** applicable rules and regulations of the secretary of health and environment. If a person applies for a ~~funeral director's~~ license for the purpose of opening a new funeral establishment or branch establishment, ~~or~~ for the purpose of operating a funeral establishment, ~~or~~ branch establishment **or crematory** which has not been heretofore inspected and approved by the board, or if a licensed funeral director **or crematory operator in charge** makes structural alterations or additions to an existing funeral establishment ~~or~~, branch establishment **or crematory**, the board shall have the right to withhold the issuance or renewal of any license until any such funeral establishment ~~or~~, branch establishment **or crematory** has been inspected and approved by the board or its representatives. All references herein to "board" shall refer to the state board of mortuary arts of the state of Kansas unless otherwise clearly indicated. The board is hereby authorized and empowered to do all things necessary and

proper in the administration of all the provisions of this act. Members of the state board of mortuary arts shall be allowed the same fees and expenses as are allowed for administering the embalmers' license law.

Sec. 11. K.S.A. 2000 Supp. 65-1727 is hereby amended to read as follows: 65-1727. (a) On or before October 15 of each year, the state board of mortuary arts shall determine the amount of funds that will be required during the next ensuing two years to properly administer the laws which the board is directed to enforce and administer under the provisions of article 17 of chapter 65 of the Kansas Statutes Annotated, and acts amendatory of the provisions thereof and supplemental thereto, and by rules and regulations shall fix fees in such reasonable sums as may be necessary for such purposes within the following limitations:

Embalmers examination fee, not more than.....	\$200 \$300
<u>Embalmers endorsement application fee, not more than</u>	<u>400</u>
Embalmers reciprocity application fee, not more than	300 400
Funeral directors examination fee, not more than	200 300
Funeral directors reciprocity application fee, not more than	300 400
<u>Embalmers/funeral directors reciprocity application fee, not more than . .</u>	<u>400</u>
Assistant funeral directors application fee, not more than	400 200
Embalmers license and renewal fee, not more than	450 250
Funeral directors license and renewal fee, not more than.....	250 350
Assistant funeral directors license and renewal fee, not more than	200 300
Apprentice embalmers registration fee, not more than	400 150
Funeral establishment license fee, not more than.....	500 800
Branch establishment license fee, not more than	500 800
<u>Crematory license fee, not more than</u>	<u>800</u>
<u>Crematory renewal fee, not more than.....</u>	<u>800</u>
<u>Funeral establishment/crematory license fee, not more than.....</u>	<u>1000</u>
<u>Funeral establishment/crematory renewal fee, not more than.....</u>	<u>1000</u>
<u>Branch establishment/crematory license fee, not more than</u>	<u>1000</u>
<u>Branch establishment/crematory renewal fee, not more than.....</u>	<u>1000</u>
Duplicate licenses.....	20
Rulebooks	20
Continuing education program sponsor applications.....	25
Continuing education program licensee applications	25

At least 30 days prior to the expiration date of any license issued by the board, the board shall notify the licensee of the applicable renewal fee therefore.

(b) The fees established by the board under this section immediately prior to the effective date of this act shall continue in effect until such fees are fixed by the board by rules and regulations as provided in this section. **An owner of a licensed funeral establishment or licensed branch establishment and a licensed crematory may be charged by the board of a combined funeral establishment/crematory license or renewal fee or branch establishment/crematory license or renewal fee under this section in lieu of a separate license or renewal for each facility.**

(c) The state board of mortuary arts may license embalmers via endorsement from another state: (1) if the individual has been licensed for at least five years and has completed at least five consecutive years of active practice in embalming; (2) has passed the national examination written by the international conference of funeral service examining boards; and (3) has not had any adverse action taken against such licensee by the state board in which licensure is held. The original fee for such endorsement license and the renewal fee shall be in the amounts fixed by the board in accordance with the provisions of this section.

(e) **(d)** Fees paid to the board are not refundable.

Sec. 12. K.S.A. 65-1732 is hereby amended to read as follows: 65-1732. With respect to the cremation of dead bodies, as such term is defined in subsection ~~(4)~~ **(5)** of K.S.A. 65-2401 and amendments thereto, if after a period of ~~120~~ **90** days from the time of cremation the cremated remains have not been claimed, the funeral establishment, **branch establishment or crematory** may dispose of the cremated remains: (a) If the funeral establishment, **branch establishment or crematory** has sent by certified mail, return receipt requested, at least 30 days prior to the end of such period of time to the last known address of the responsible person who directed and provided for the method of final disposition of the dead human remains **authorizing agent, as defined under section 1 of this act, and amendments thereto,** a notice that such remains will be disposed of in accordance with the provisions of this section unless claimed prior to the end of the ~~one-hundred-twenty-day~~ **90-day** period of time; and (b) if the remains have not been claimed prior to the end of such period of time. Such disposal shall include **burial by** placing the remains in a **church or cemetery plot,** scatter garden, or pond, or church columbarium or otherwise disposing of the remains as provided by rule and regulation of the board of mortuary arts. **Disposition may include the commingling of the cremated remains with other cremated remains and thus the cremated remains would not be recoverable.**

Sec. 13. K.S.A. 65-1723 and 65-1732 and K.S.A. 2000 Supp. 65-1727 are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after January 1, 2002, and its publication in the statute book.