



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 1221 (as introduced 11-27-18)
Sponsor: Senator Jim Stamas
Committee: Regulatory Reform

Date Completed: 12-5-18

CONTENT

The bill would amend Article 18 (Mortuary Science) of the Occupational Code to do the following:

- **Prescribe new requirements that an individual wishing to be licensed to practice mortuary science would have to meet in order to receive a license.**
- **Prescribe additional requirements that an individual who held or previously held a valid mortuary science license, or dual licenses as a funeral director and embalmer, in another state would have to 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, 2023.**
- **Require at least two of the four hours to involve one or more specified subjects.**
- **Require an applicant for a funeral establishment license to submit a license application that met certain requirements.**
- **Prescribe requirements for the ownership and management of a funeral establishment, including allowing LARA and the Board to promulgate rules to establish requirements for the licensure, operation, and management of a funeral establishment.**
- **Permit a funeral establishment to continue to use the licensed establishment name after the death or retirement of a member, officer, or director if certain requirements were 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.**

The bill also would amend Article 2 (Administration) of the Code to allow LARA to enter into an agreement with a statewide funeral service trade organization to provide an electronic continuing education tracking system that would provide an electronic record of the continuing education courses, classes, or programs completed by individuals licensed under Article 18.

The bill would take effect 90 days after its enactment.

License to Practice Mortuary Science

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, would require LARA to issue a license to an individual who met all of the following:

- Served as a resident trainee under the personal supervision and instruction of the holder of a license for the practice of mortuary science for one year, if the individual filed his or her initial license application before January 1, 2023, or for 180 days, if the individual filed his or her initial license application on or after January 1, 2023.
- Satisfactorily passed 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 passed a Michigan examination developed and administered by or under the authority of LARA.
- Was of good moral character.

The applicant also would have to complete a mortuary science program that was accredited by an agency recognized by the United States Secretary of Education as a specialized accrediting agency in funeral service or mortuary science, and meet one of the following:

- Graduated from a three-year course in mortuary science at a school, college, or university that was accredited by the U.S. Secretary of Education as a specialized accrediting agency in funeral service or mortuary science, if the individual filed his or her initial license application before January 1, 2023.
- Graduated with a baccalaureate degree or higher degree from an educational institution that was accredited by an agency recognized by the U.S. Secretary of Education as a regional accrediting agency for postsecondary education or whose baccalaureate degree program was accredited by a specialized accrediting agency in funeral service or mortuary science.

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 would delete this provision.

The Code also permits LARA to waive a portion of the requirement of one year of resident training if the applicant has a baccalaureate degree from an accredited school, college, or university, and LARA determines that the degree is a satisfactory substitute for resident training. Under the bill, this provision would not apply after December 31, 2022.

License Reciprocity

The Code requires the Department to issue a mortuary science license 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 practice 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 could issue a mortuary science license to an individual who held 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 all of the following, in addition to the requirement currently prescribed in the Code:

- Held the license or licenses in the other state for a period of at least five years.
- Completed a mortuary science program that was accredited by an agency recognized by the United States 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 could refuse to issue a mortuary science license to an individual who was 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 would 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, 2023. (The licensing cycle for a mortuary science licensee is two years.)

All of the following would apply to the continuing education requirement:

- It would not apply to a licensee who had held a valid license for at least 40 years.
- The Department, or a statewide funeral service trade organization if applicable, would have to determine whether a continuing education course was an eligible course.
- If an individual received his or her initial license after the beginning of the current licensing cycle for that license, LARA could prorate the number of hours of eligible continuing education that licensee would have to complete for the year of the license cycle in which the license was issued.
- Compliance with the requirement would be a condition to further renewal of a license.

Additionally, at least two of the four required hours of eligible continuing education courses would have to 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.

For purposes of continuing education courses, the Department may contract with a statewide funeral service trade organization to administer a continuing education program and to offer or approve continuing education courses. If authorized in the contract, a statewide funeral service trade organization could contract with other entities to provide coursework and other services in connection with the continuing education program.

Funeral Establishment License

The bill would require an applicant for a funeral establishment license to submit a license application, on a form developed by LARA, that met all of the following, as applicable:

- The application would have to indicate whether the applicant was an individual, sole proprietorship, partnership, corporation, or limited liability company, or another type of business entity.
- If the applicant was a sole proprietorship or a general partnership, the application would have to confirm that the applicant was registered at the county level, and the applicant would have to provide to LARA a copy of its certificate of conducting business under an assumed name or certificate of copartnership.
- If the applicant was a business entity, the application would have to confirm that the applicant was a business entity organized under Michigan law and was in good standing, or a foreign entity that had a certificate of authority and was authorized to do business in Michigan, and the applicant would have to provide to LARA its full legal name, a copy of its articles of incorporation, articles of organization, or certificate of authority, and its Federal employer identification number.

"Business entity" would mean a person as provided in Article 1 the Code, except a sole proprietorship or general partnership: an association, corporation, limited liability company, common law trust, or any combination thereof.

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 would delete these provisions and, instead, provides that all of the following would apply to the ownership and management of a funeral establishment:

- The establishment would have to appoint a manager who held a license for the practice of mortuary science to manage the funeral establishment.
- The establishment would have to notify LARA in writing of the name of the individual appointed as the manager, and would have to conspicuously display at its entrance the manager's name.
- The Department and the Board could promulgate rules to establish requirements for the licensing, operation, and management of the establishment, including a limit on the number of establishments for which a licensee could be appointed as a manager.
- The establishment would have to register the name of the person that owned the funeral establishment with LARA.
- The names of all of the establishment's owners, officers, directors, or members would have to be disclosed to LARA.

Failure to disclose to LARA all of a funeral establishment's owners, officers, directors, or members would be grounds for disciplinary action against the funeral establishment's license.

Under the Code, an individual whose license had been revoked may not operate, either directly or indirectly, or hold an interest in a funeral establishment. Instead of operate, the bill would refer to *own or manage*.

The Act does not prohibit a person whose license has been revoked from leasing property owned by the person for use as a funeral establishment if the person does not participate in the control or profit of the establishment otherwise than as a lessor of the premises for a fixed rental not depend upon earnings. A branch establishment must be operated by a person who is the holder of a license for the practice of mortuary science. The bill would delete these provisions.

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 is 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 issued 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 would delete these provisions.

Instead, the bill would allow a lawfully formed business entity that was licensed as a funeral establishment to continue to use the licensed establishment name after the death or retirement of a member, officer, or director if the death or retirement was reported to LARA within 30 days, and if the licensed establishment name had been formerly used.

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 would automatically cancel a funeral establishment's license. Also, a licensee would have to report a change in ownership or location, or a change in ownership of a business entity that owned a funeral establishment to LARA within 30 days after the change.

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

MCL 339.210 et al.

Legislative Analyst: Stephen Jackson
Tyler VanHuyse

FISCAL IMPACT

The bill would have a significant negative fiscal impact on the Department of Licensing and

Regulatory Affairs and no fiscal impact on local government units. Significant staff time and resources would be required in order to implement, monitor, and enforce the new licensure requirements, particularly those related to continuing education. The bill permits the Department to administer a continuing education program internally or to enter into a contract for these services with a statewide funeral service trade organization. In addition, the new requirements likely would result in other long-term increased compliance monitoring and enforcement costs. These activities could require an additional staff member. The current standard estimate for an additional FTE is \$110,000.

As a result of these cost increases, the Department expects to require a \$20.00 increase in the mortuary science license fee. As of December 3, 2018, there are 2,100 mortuary science licensees in Michigan.

Fiscal Analyst: Elizabeth Raczkowski

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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.