

SESSION OF 2010

**SUPPLEMENTAL NOTE ON SENATE
SUBSTITUTE FOR HOUSE BILL NO. 2310**

As Recommended by Senate Committee on
Public Health and Welfare

Brief*

Senate Sub. for HB 2310 would enact new law to create licensure requirements for crematory operators and would amend existing law to increase the statutory maximum for certain fees charged by the Kansas State Board of Mortuary Arts and would make several amendments to laws governing the cremation process.

Crematory Operators, Licensure Requirements

The bill would enact new law to license crematory operators. A “crematory operator” is defined by the bill to mean “a person who is engaged in, conducting or holding oneself out as engaged in or conducting, the business of cremation.” Among the new requirements, the bill would:

- Require that a crematory operator, in connection with the operator’s licensed crematory, use the words “crematory operator” or any other title that would indicate that the person is engaged in the business of cremation.
- Require that every cremation conducted in Kansas be under the personal supervision of a licensed crematory operator or crematory operator in charge with all cremations performed in a licensed crematory.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Make it unlawful for any person to engage in the business of a crematory operator in the state without a crematory operator's license.
- Require that every person desiring to enter the practice of crematory operator make written application to the Board of Mortuary Arts and meet the requirements of the Board concerning age and training in cremation services. A crematory operator's license would be automatically suspended, if, at the end of one year of licensure, the individual has not completed the approved training.
- Establish a renewal fee for licensure and a process for the reinstatement of a lapsed license and relicensure. The expiration date for each license is required to be established by rules and regulations. Additionally, in order to provide for a biennial system of licensure, the Board is permitted to create a pro-rated system of initial licensure and renewals (licenses could expire prior less than two years from date of issuance or renewal). Licensed crematory operators are required to submit evidence of satisfactory completion of a required continuing education program. The Board by duly adopted rules and regulations is required to establish requirements for the continuing education program.
- Require the State Board of Mortuary Arts to prepare proposed rules and regulations the Board deems necessary to carry out the new provisions in law on or before January 1, 2011. The Board will be required to adopt such rules and regulations to be effective on or after July 1, 2011.

Additionally, the bill would require any crematory that intends to recycle metallic remnants, prosthetic implants, or anything else remaining after cremation or removed prior to cremation to get consent from the legal next of kin of the deceased person. The recycling must be in compliance with state and federal law.

Fees

The bill would increase the maximum limits established for a number of fees established by the State Board of Mortuary Arts and would delete the embalmer's examination fee [a fee currently limited to not more than \$300]. Additionally, the bill would establish the fee for a crematory operator's license and renewal fee, with the limitation set at \$200.

Amendments to Existing Law– Requirements Governing Cremation

The bill also would make amendments to three definitions in the current law and establish a new definition for the term "crematory operator." Specifically, the definition of "alternative container" would be amended to allow that the container must be composed of readily combustible "or consumable" materials. The current definition of cremation is deleted and the term would instead mean "the mechanical and/or other dissolution process that reduces human remains to bone fragments. Cremation includes the processing [of] and usually includes the pulverization of bone fragments." The term "crematory operator in charge" would be amended to specify the person must be a licensed crematory operator.

Additionally, the bill would require any "crematory operator in charge" to also hold a funeral director's license unless the crematory only receives dead human bodies for cremation through licensed funeral establishments. The bill also would allow that only licensed crematory operators may perform cremation.

The bill would amend existing law by adding a requirement that, for any crematory that is unable to cremate the dead human body immediately upon taking custody of the body, the body be stored in preparation rooms or holding facilities approved by the Board. The bill also would extend certain liability protections (cremation authorization form and process) to crematory operators and to embalmers and assistant funeral

directors. The Board would be granted the ability to take additional disciplinary actions on the issuance or renewal of a license for crematory operators and crematory operators in charge. A new condition for disciplinary action would be added for a licensee who has aided or abetted an unlicensed person to practice any activity for which a license is required (Chapter 65, Article 17).

The provisions of the bill will become effective on and after July 1, 2011. The Act would take force and be in effect upon publication in the statute book.

Background

The Senate Committee on Public Health and Welfare recommended the introduction of a substitute bill. The substitute bill incorporates the provisions of SB 506 (as amended by Senate Committee). The contents of 2009 HB 2310 (amended the Long-Term Care Partnership Program Act) were enacted in 2009 HB 2052.

SB 506 was introduced by the Senate Public Health and Welfare Committee at the request of the State Board of Mortuary Arts. Proponents of the bill included the Executive Secretary of the Board of Mortuary Arts and the Executive Director of the Kansas Funeral Directors Association (KFDA). The Board representative stated that the bill represents nearly two years of effort by publishing the language on the Board website, working with the Cremation Association of North America (CANA), and receiving input from the KFDA. The Board representative requested the Committee give consideration to further amendments that would incorporate amendments adopted by the CANA to its Model Cremation Law. The representative also requested consideration for a delayed effective date for the bill. The KFDA representative testified in support of the bill and indicated that the Association's position is that persons who sell cremation services and have direct contact with consumers seeking cremation services should be licensed funeral directors and that

it is also important that persons who actually operate the cremation chamber be licensed as crematory operators and receive appropriate training.

There were no opponents of the bill at the time of the Committee hearing.

The Senate Public Health and Welfare Committee amended the bill to:

- Specify the new law and amendments to current law are in effect on and after July 1, 2011;
- Require the Board prepare rules and regulations on or before January 1, 2011 and adopt such rules and regulations to be effective on or after July 1, 2011; and
- Amend the definitions of “alternative container” and “cremation.”

The amendments were requested by the State Board of Mortuary Arts.

The fiscal note prepared by the Division of the Budget on the introduced version of SB 506 states that passage of the bill would generate \$750 of additional revenue in FY 2011, with 80 percent credited to the Board’s fee fund and 20 percent credited to the State General Fund. Additionally, the agency indicated that it did not anticipate raising any of the current maximum statutory fees during FY 2011. Any fiscal effect associated with the bill is not reflected in *The FY 2011 Governor’s Budget Report*.