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## BILL ANALYSIS



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House Bill 4437 (Substitute H-6 as passed by the House)  
Sponsor: Representative Rodney Wakeman  
House Committee: Regulatory Reform  
Ways and Means  
Senate Committee: Regulatory Reform

Date Completed: 9-29-20

**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, 2025.**
- **Require at least two of the four 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 disclose certain ownership interests in the funeral establishment.**
- **Permit a funeral establishment to continue to use the name of licensed establishment 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.**
- **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.**

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 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 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 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.

#### License Reciprocity

The Code requires LARA 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 would have to 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 requirements 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 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 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, 2025. (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 consecutive years; however, this would not apply to an individual who was designated as the licensed manager of a funeral establishment.
- The Department 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 continuing education 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 in each year of a license cycle 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.

## Transportation & Storage of Dead Human Bodies

The bill would require a licensee to supervise and be responsible for the transportation and storage of a dead human body. The licensee could 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 would delete this provision.

Instead, under the bill, Section 1807 would not apply to any of the following:

- The transportation or storage of a dead human body that was 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 would have to disclose ownership interests in the funeral establishment as follows:

- If the owner were a trust, the applicant would have to disclose the names and addresses of the beneficiaries.
- If the owner were a privately held corporation, the applicant would have to disclose the names and addresses of all shareholders, officers, and directors.
- If the owner were a publicly held corporation, the applicant would have to 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 were a partnership or limited liability partnership, the applicant would have to disclose the names and addresses of all partners.
- If the owner were a limited partnership or limited liability limited partnership, the applicant would have to disclose the names and addresses of all partners, both general and limited.
- If the owner were a limited liability company, the applicant would have to 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 would delete 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 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 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 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 were reported to LARA within 30 days, and if the licensed establishment name were used before the death or retirement of the member, officer, or director. "Business entity" would mean 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 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 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 would be immune from civil liability for the proper disposition of unclaimed cremated remains if the funeral establishment maintained and safeguarded the unclaimed cremated remains until proper disposition of the remains and any of the following were met:

- The disposition of the unclaimed cremated remains was made six months or longer after the date of cremation and, if notice were required, at least 30 days after the date the notice was sent.
- The disposition was authorized by a special fiduciary or special personal representative under.
- The disposition was authorized by the medical examiner for the county where the decedent was 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 would mean 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 would not be 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 was made more than one year after the date of cremation.
- Any proper disposition of unclaimed cremated remains that was 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 would be 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 would be subject to the penalties of Article 6 for failure to comply with the Prepaid Funeral and Cemetery Act.

MCL 339.1801 et al.

Legislative Analyst: Stephen Jackson

**FISCAL IMPACT**

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

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.