

Approved: February 16, 1994  
Date sh

## MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chairperson Joann Flower at 1:30 p.m. on February 9, 1994 in Room 423-S of the Capitol.

All members were present except:

Committee staff present:

William Wolff, Legislative Research Department  
Norman Furse, Revisor of Statutes  
Sue Hill, Committee Secretary

Conferees appearing before the committee:

Carol Macdonald, Administrator for Kansas Dental Board  
Mack Smith, Executive Secretary, Kansas State Board of Mortuary Arts  
Pam Scott, Executive Director, Kansas Funeral Directors/Embalmers Association (KFDA)  
Ron Smith, Kansas Bar Association

Others attending: See attached list

Chair opened the meeting drawing attention to two sets of Committee minutes, February 3rd, and 7th, 1994. If no corrections are called to the attention of the Committee secretary by 5:00 p.m. tomorrow, (2/10/94), these minutes will be considered approved as presented.

Chair invited those with bill requests to begin.

Carol Macdonald offered a hand-out, (Attachment No. 1), and gave a detailed explanation of the bill request, i.e., concerning the cycle for re-licensure of licensees by the Board. The cycle would be shortened from October to February rather than 8 months as is current law, with licensure notices being mailed October 1, license deadline by November 30, a \$100 penalty imposed after December 31, certified mailing on January that February 1 is final cancellation. This process would take just 4 months. She detailed rationale.

Rep. Freeborn moved to introduce the proposal detailed by Ms. Macdonald, seconded by Rep. Henry. No discussion. Motion carried.

Chair requested a staff briefing on **HB 2772**.

Dr. Wolff gave a detailed explanation of **HB 2772**, drawing attention to language changes, and technical material. He noted perhaps conferees would explain the word "registered" in line 23, page 1 as it is stricken and in line 28 it is not. He detailed new language on page 1, line 33; noted, student embalmers must practice under the direct personal supervision of a licensed embalmer at all times, while an apprentice embalmer shall be under the personal supervision of a licensed embalmer; "personal supervision" means a licensed embalmer takes full responsibility for the actions of the apprentice embalmer, however, his physical presence is not required; "direct personal supervision" means a licensed embalmer takes full responsibility for the actions of the student embalmer and must be physically present at all times. Dr. Wolff drew attention to each proposed change; penalties; language changes in line 29, page 2 to delete "and". The language would read, "if embalming is to be performed, the funeral establishment shall contain a preparation room, equipped...." A new section (c) on page 3 sets out language on requirements to establish a preparation room. He noted the penalty would change to a class A nonperson misdemeanor.

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 423-S  
Statehouse, at 1:30 p.m. on February 9, 1994.

Mack Smith, Executive Secretary, Board of Mortuary Arts offered hand-out (Attachment No. 2). He stated the proposed language would clarify the supervision of student and apprentice embalmers by licensed embalmers during the embalming process. He gave a detailed explanation of each proposed change, section by section, then recommended an amendment by adding on page 3, line 26 to add, "and funeral director". He noted this is requested because transportation could be involved with an embalming establishment, the Board feels that a licensed funeral director should also be required. Further recommended amendments, i.e., page 1, line 37 to delete "Kansas" and also on page 2, line 1. He drew attention to other proposed changes, i.e., Section 2, page 2, lines 4-18; Sec. 4, page 3, lines 27-37 would convert language concerning criminal violation of the embalming and funeral statute; Sec. 3 page 2, lines 29-34 updates the definition of embalming establishment. Language for separate embalming establishments is found on page 3, lines 17-26 in Sec. 5. He then requested an amendment to HB 2772 on page 3, line 26 by adding "and funeral director". He offered rationale regarding transportation. He thanked Dr. Wolff for calling attention to "registered" in line 28, page 1, it should also be omitted. He answered numerous questions, i.e., educational requirements for an apprentice embalmer; the Board does require the physical presence of a licensee, and HB 2772 should help to clarify the statute.

Dr. Wolff asked, does the Board want the apprentice to practice under someone other than a Kansas licensee, but a student has to practice under a Kansas licensee. Mr. Smith noted the intent of HB 2772 is, that an apprentice embalmer could be there, but the embalmer would not have to be there if the apprentice embalmer is. Dr. Wolff noted, "personal supervision" is defined in statutes. He explained.

Mr. Furse asked, regarding the suggestion on deleting "Kansas in line 37 on page 1, what about line 34 also on page 1? Mr. Smith replied, this language is about student embalmers, so "Kansas" should not be deleted from line 34, or from lines 41 and 42. Mr. Furse continued with questions, i.e., page 2, lines 20-27 language appears in a way to expand that definition considerably. He asked what is the intent of the Board? Mr. Smith replied, (1), it would allow for the licensing of a funeral home without requiring a preparation room, (2) current law reads that retail sale and display of funeral merchandise is enough in itself to warrant licensure of a funeral establishment. That was not the intent of the Board. The Board does not wish to restrict someone from selling strictly caskets and requiring them to be licensed as a funeral home. Mr. Furse asked, what would this pick up, rather than exclude what is not now covered by the definition of funeral establishment? Mr. Smith replied, beside the example he gave of someone selling strictly caskets, he believes, nothing else would be picked up with the language proposed. Mrs. Furse inquired, you don't believe it would pick up any additional entities that could be called a funeral establishment, but would exclude one or two that might, (under current law)? Mr. Smith replied, there would probably be someone that would or could go into great detail and fine an exemption somewhere, somehow, but in anticipating having everyone looking over the language proposed in HB 2772, this preparation was a long, thought-out process where everyone agreed this was the best form of definition that they could come up with that would not have a great affect on the industry. The greatest affect, possibly, being that funeral homes (establishments) will not be required to have preparation rooms in order to be licensed. He noted this is not earth shattering since branch establishments currently do not have to have preparation rooms in order to be licensed. Adding the preparation room deletion, and also allowing embalming establishments, basically keeps up the trends in this Industry.

Mr. Furse inquired, then the intent is not to pick up any new places that might be defined as a funeral establishment, but only to clarify the law and to exclude a couple that are questionable? Mr. Smith replied, if it would pick up a place, it would be in the interest of the health and welfare of the public in that bodies are at a place of business that currently doesn't require licensure, it is hoped that this provision will pick those places up. He stated he did not know of any places like that in the state of Kansas currently. Mr. Smith continued to answer questions regarding cremation; churches being considered as a business premise; a licensed embalmer can supervise several establishments if there is an apprentice at those different locations.

Further questions, i.e., line 34, page 2 the language is not identical to that on page 3, line 21, as "cremation" does not appear in both places. Mr. Smith stated, "cremation" could be added on page 2. He explained that if embalming takes place before cremation, current law covers that process. Language regarding preparation room signs appears on page 2, lines 35 and not on page 3, line 27. Mr. Smith said, it could be added, but is in current federal requirements so would be picked up anyway. On page 3, line 22, it was suggested that the word "only be inserted after the word "embalm". Mr. Smith stated, that would be fine. The question was asked if churches could be considered as "establishments" since there are services held in churches.

Mr. Furse noted also that was a question he had in regard to present language in HB 2772. He stated, to the extent the churches are not business premises, they would not be picked up here. To the extent that something or some entity related to a church might be a business premise though, and could well be picked up here, if it qualified under some of the added verbage. Generally, however, a church wouldn't be considered a business premise.

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 423-S  
Statehouse, at 1:30 p.m. on February 9, 1994.

Questions continued. Mr. Furse asked, are there embalming establishments that exist separately from funeral establishments in terms of providing that particular service as sort of a specialty service? Mr. Smith replied, no, as the law is written in order to be licensed you have to be a full fledged funeral establishment. In answer to your question regarding any establishments that are acting basically as an embalming establishment, yes, there are two that are doing so because they are also showing caskets and serving the public. At this point they would not qualify. There isn't one establishment in the state that would qualify at this point that for this license the way the bill is written.

Pam Scott offered hand-out, (Attachment No.3). She noted, basically KFDA IS in support of **HB 2772** but have concerns with the amendment to delete from the definition, "a place of business used for the retail sale or display of funeral merchandise". She explained, noting it would allow casket or cremation stores to set up business in a mall or some location and compete unfairly with a funeral establishment without being licensed. She explained the 100 percent trust of monies received for furnishing of property or funeral or burial merchandise. She noted their Association has no objection to competition, but thinks that a fair playing field is needed. She offered an amendment, i.e., clarifying statute 16-301. She detailed the amendment suggesting the deletion of "by a funeral director and embalmer". Ms. Scott answered questions. She stated they aren't thrilled that the definition of "funeral establishment" is being taken out, but could live with it.

Mr. Furse stated, as he reads the statute, regarding the language that is deleted, current law would not affect any services other than professional services, is that not correct? Ms. Scott replied, yes. Ms. Scott then noted there is another bill just introduced that is cemetery reform with a lot of amendments, **HB 2944** in Local Government.

Mr. Furse was requested to check into whether or not the title would need to be changed. He agreed to do so, then would advise the Committee. He noted it doesn't relate to the licensing per se, but it may be that the title would be broad enough to encompass this section. He asked permission to have some time to check it carefully.

HEARING CLOSED ON **HB 2772**.

Chair requested a staff briefing on **HB 2786**. Mr. Furse gave a comprehensive explanation, i.e., **HB 2786** provides that you can enter into an agreement that you can authorize an individual other than yourself to act as your power of attorney making health care decisions for you. There is a form the statute sets out that you may enter into, notarized and sworn to before witnesses, setting out the fact that you are giving certain authority to make these health care decisions. He detailed the bill section by section.

Pam Scott, Kansas Funeral Directors and Embalmers Association (KFDA) offered hand-out, (Attachment No.4). She noted the (KFDA) is requesting an amendment to provide the funeral director with immunity from liability in the event the funeral directors follow the directions of a durable power of attorney for health care decisions. Noted particular concern for the funeral director are the situations where the agent directs the body of the deceased be cremated, since the cremation process is irreversible. She noted they are not challenging the durable power of attorney, but are asking for some protection against liability in the event the provisions of the durable power of attorney are followed. Immunity will discourage litigation in this area. She answered questions. Most concern expressed regarding this legislation had originated in the Wichita area.

Mr. Ron Smith, General Counsel, Kansas Bar Association (Attachment No.5) noted the Bar Association takes no position on **HB 2786**, the hand-out offered is informational. He explained two kinds of durable power of attorney, i.e., uniform durable power and the durable power for health care decisions. He noted the difference between the two, i.e., the uniform durable power of attorney recognizes good faith reliance. The durable power of attorney health care does not. The problem in **HB 2786** can be solved by going back into the durable power of attorney for health care and create a good faith reliance section. That would help the funeral directors and everyone else. It is possible to combine the durable power of attorney for health care, but also the durable power of attorney for financial matters. He noted if funeral directors are exempted, there will be a slew of others who rely on these documents wanting the same policy.

Mr. Furse asked, do you think there might be a problem constitutionally, with creating an exception like this, in terms of equal protection, given the court's decision. Mr. Smith said it might, or might not.

HEARING CLOSED ON **HB 2786**.

Chair drew attention to fiscal notes.

Fiscal note on **HB 2772** recorded as (Attachment No.6)

Fiscal note on **HB 2786** recorded as (Attachment No.7).

Meeting adjourned at 2:35 p.m.



JOAN FINNEY  
GOVERNOR

## BOARD OF DENTAL EXAMINERS

KANSAS DENTAL BOARD  
BUSINESS OFFICE  
3601 SW 29TH STREET, S-134  
TOPEKA, KANSAS 66614-2062  
TELEPHONE NO. (913) 273-0780

I am Carol Macdonald, administrator for the Kansas dental board. The bill the board is proposing would change the procedure for annual licensure. Currently the cycle for relicensure is October to June. The board proposes that cycle be October to February 1. With the proposed change is a chart which shows the current cycle and proposed one. In addition the board would impose a \$100 fine after December 31.

This change will enable the office to work more efficiently. The first year will not likely produce any fiscal change, however subsequent years would produce slightly lower receipts along with lower expenses.

## Current licensee numbers:

Dentists: Kansas, all status,	1464
Out of State,	727
Total	2191

Hygienists: Kansas	990
Out of State	410
Total	1400

Total Licensees	3591
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*PHW*  
*2-9-94*  
*Attm #1.*

**CHANGE IN STATUTE  
FOR RELICENSURE K.S.A. 65-1431(d)**

**Current**

October 1 - Original  
Mailing

December 1 - Re-licensure due

January 1 - Reminder mailing

February 1 - Certified mail -  
(statute requirement)

March 1 - Mailing, license  
cancelled - but may be rein-  
stated anytime during the next  
3 months for a penalty fee of  
\$15.00

June 1 - Cancelled, final, (may  
re-apply) Four (4) mailings

TOTAL REGISTRATION TIME IS  
EIGHT MONTHS

statute.chg

**Proposed**

October 1 - No change

November 30 - licensure due  
\$100 penalty imposed after  
December 31

January 1 - certified mail that  
February 1 is final  
cancellation

February 1 - cancelled - may  
re-apply for licensure

(Three mailings - one  
certified)

TOTAL TIME FOUR (4) MONTHS

*P.H.W.  
2-9-94  
attn #1-2  
38296*

BILL NO. \_\_\_\_\_

AN ACT concerning the Kansas dental board; renewal of licenses granted by the board; amending K.S.A. 65-1431 and repealing the existing section.

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

Section 1. K.S.A. 65-1431 is hereby amended to read as follows: 65-1431. (a) On or before the first day of December of each year, each licensee of the Kansas dental board shall transmit to the secretary of the board, upon a form prescribed by the board, such licensee's signature, post-office address, office address, the number of the license certificate of such licensee, whether such licensee has been engaged during the preceding year in active and continuous practice, whether within or without this state, and such other information as may be required by the board, together with the annual registration fee for dentists which is fixed by the board pursuant to K.S.A. 65-1447 and amendments thereto.

(b) The board shall require every licensee to submit with the renewal application evidence of satisfactory completion of a program of continuing education required by the board. The board by duly adopted rules and regulations shall establish the requirements for such program of continuing education as soon as possible after the effective date of this act. In establishing such requirements the board shall consider any existing programs of continuing education currently being offered to such licensees.

(c) Upon fixing the annual registration fee, the board shall immediately notify all licensees of the amount of the fee for the ensuing year. Upon receipt of such fee and upon receipt of evidence that the licensee has satisfactorily completed a program of continuing education required by the board, the licensee shall

2-9-94  
PNW  
attn #1-3  
pg 3 of 6

be issued a renewal certificate authorizing the licensee to continue to practice in this state for a period of one year.

(d) (1) Any license granted under authority of this act shall automatically be canceled if the holder thereof fails to ~~secure-a~~ apply for renewal certificate~~>-within-a-period-of--three months-from-November-30-of-each-year~~ of such license prior to the expiration of the license.

(2) Any licensee whose license is automatically canceled by reason of failure, neglect or refusal to secure the renewal certificate may be reinstated by the board at any time within ~~three--months~~ one month from the date of the automatic cancellation of such license, upon payment of the annual registration renewal fee and upon proof that such licensee has satisfactorily completed a program of continuing education required by the board or at any time within two months from the date of the automatic cancellation of the license upon payment of the annual renewal fee and a penalty fee of \$15 \$100 and upon proof that such licensee has satisfactorily completed a program of continuing education required by the board. ~~If-such-licensee has-not-applied-for-renewal-of-the-license--within--three--months after--it--has--been--automatically-canceled-and-has-not-paid-the required-fees-or-presented-proof-of--satisfactory--completion--of the--required-program-of-continuing-education,--then-such-licensee shall-be-required--to--file--an--application--for--and--take--the examination-provided-for-in-this-act.~~

(e) Upon failure of any licensee to pay the annual registration fee or to present proof of satisfactory completion of the required program of continuing education within two months after November 30, the board shall notify such licensee, in writing, by mailing notice to such licensee's last registered address. Failure to mail or receive such notice shall not affect the cancellation of the license of such licensee.

(f) The board may waive the payment of annual fees and the continuing education requirements for the renewal of certificates without the payment of any registration fee for any person who

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2-9-94  
Actm #1-4  
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has held a Kansas license to practice dentistry or dental hygiene if such licensee has retired from such practice or has become temporarily or permanently disabled and such licensee files with the board a certificate stating either of the following:

(1) A retiring licensee shall certify to the board that the licensee is: (A) At least 65 years of age and has retired from the active practice of dentistry or dental hygiene; and (B) not engaged in the provision of any dental service, the performance of any dental operation or procedure or the delivery of any dental hygiene service as defined by the statutes of the state of Kansas; or

(2) a disabled licensee shall certify to the board that such licensee is no longer engaged in the provision of dental services, the performance of any dental operation or the provision of any dental hygiene services as defined by the statutes of the state of Kansas by reason of any physical disability, whether permanent or temporary, and shall describe the nature of such disability.

(g) The waiver of fees under subsection (f) shall continue so long as the retirement or physical disability exists. In the event the licensee returns to the practice for which such person is licensed, the requirement for payment of fees and continuing education requirements shall be reimposed commencing with and continuing after the date the licensee returns to such active practice. The performance of any dental service, including consulting service, or the performance of any dental hygiene service, including consulting service, shall be deemed the resumption of such service, requiring payment of license fees.

(h) The Kansas dental board may adopt such rules and regulations requiring the examination and providing means for examination of those persons returning to active practice after a period of retirement or disability as the board shall deem necessary and appropriate for the protection of the people of the state of Kansas.

Sec. 2. K.S.A. 65-1431 is hereby repealed.

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Attn #1-5  
Bj5jb

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

PKW  
2-9-94  
Attn #1-6  
Pg 676

M ?S OF THE BOARD

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*The Kansas*  
*State Board of Mortuary Arts*

CREATED AUG. 1, 1907

700 S.W. JACKSON ST., SUITE 904  
TOPEKA, KANSAS 66603-3758  
(913) 296-3980

February 9, 1994



Representative Joann Flower, Chairperson  
House Committee on Public Health and Welfare  
Statehouse, Room 423-South  
Topeka, Kansas 66612

Madam Chair and Members of the Committee:

My name is Mack Smith, and I am the executive secretary to the Kansas State Board of Mortuary Arts. Thank you for the opportunity to appear before you today to ask for your support of House Bill 2772.

The passage of HB 2772 would clarify the supervision of student and apprentice embalmers by licensed embalmers during the embalming process. Student embalmers would require direct personal supervision (actual physical presence), while actions of apprentice embalmers would be under the full responsibility (not necessarily physical presence) of a licensed embalmer.

I am requesting that the word "Kansas" be deleted in line 37 of page 1 and line 1 of page 2. Apprentice embalmers may service their apprenticeships in states other than Kansas (such as Missouri, Nebraska or Oklahoma). A city such as Kansas City is an example of where this could occur. If a Kansas licensed embalmer does not happen to be employed at that particular funeral home, then a license embalmer from that state is acceptable to the board.

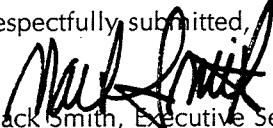
Section 2 (found on page 2 of the bill, lines 4-18) and 4 (found on page 3, lines 27-37) convert the language concerning criminal violation of embalming and funeral establishment statutes to that contained in the Kansas Sentencing Guidelines Act of July 1, 1993.

Section 3 of the bill updates the definition of funeral establishments, embalming preparation rooms and would allow licensure for funeral establishments without a preparation room (page 2, lines 29-34) and for separate Embalming establishments (page 3, lines 17-26 in section (5), (c)).

I would like to request an amendment to add the words: "and funeral director" on line 26 of page 3. Because transportation could be involved with an embalming establishment, the board feels that a licensed funeral director should also be required.

Again, thank you madam chair for the opportunity to testify today. I would be glad to attempt to answer any questions of the committee and ask for your support of the bill as amended!

Respectfully submitted,

  
Mack Smith, Executive Secretary  
Kansas State Board of Mortuary Arts

MS:tab  
Enclosure

*PHW*  
*2-3-94*  
*Attn #2*

## HOUSE BILL No. 2772

By Committee on Public Health and Welfare

1-17

AN ACT relating to mortuary arts; concerning unlawful acts and penalties; definitions; amending K.S.A. 65-1703, 65-1705, 65-1713a and 65-1726 and repealing the existing sections.

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

Section 1. K.S.A. 65-1703 is hereby amended to read as follows: 65-1703. It is unlawful for any person who is not licensed as an embalmer to advertise, practice, offer to practice, or hold oneself out as practicing the science of embalming, either by arterial or cavity treatment, or otherwise, in this state, or to embalm any dead human body for shipment or transportation by common or private carrier. It is unlawful for any common carrier to receive for transportation or to transport any dead human body unless the body has been prepared by a licensed embalmer, in accordance with this act and the rules and regulations of the board. No one except a licensed embalmer, an apprentice embalmer or a registered student embalmer under the provisions of this act and the rules and regulations of this board shall be permitted to do any of the actual embalming of a dead human body, and no licensed embalmer shall permit anyone who is not a licensed embalmer, an apprentice embalmer or a registered student embalmer assigned to such embalmer, to perform in such embalmer's place of business, or elsewhere, or under such embalmer's supervision, any of the actual embalming of a dead human body, or perform any act necessary to embalm and preserve a dead human body.

*Student embalmers must pre-register or register with the board and be under the direct, personal supervision of a licensed Kansas embalmer at all times during the embalming process. Apprentice embalmers shall be under the personal supervision of a licensed Kansas embalmer.*

The term "actual embalming" as used in this section shall not be construed to include dressing the hair, bathing, moving or dressing the body, or cosmetic work.

*The term "direct personal supervision" means that a licensed Kansas embalmer takes full responsibility for actions of the student embalmer and must be physically present at all times.*

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The term "personal supervision" means that a licensed Kansas embalmer takes full responsibility for the actions of the apprentice embalmer. It does not, however, require any physical presence.

Sec. 2. K.S.A. 65-1705 is hereby amended to read as follows: 65-1705. Any person who shall advertise, practice or hold himself or herself out as practicing the science of embalming without having complied with the provisions of this act shall be guilty of a class A nonperson misdemeanor, and upon conviction thereof before any court shall be sentenced to pay a fine of not less than fifty dollars nor more than one hundred dollars for each and every offense; or any person, railroad, express company or common carrier who shall violate the provisions of this act shall be guilty of a misdemeanor, and shall pay a fine of not less than one hundred dollars nor more than five hundred dollars for each and every offense. All fines assessed for the violation of any of the provisions of this act shall be paid to the state treasurer as provided in K.S.A. 20-2801, and any amendments thereto.

Sec. 3. K.S.A. 65-1713a is hereby amended to read as follows: 65-1713a. (a) A "funeral establishment," as the term is used herein, is a place of business premises where funeral services, visitations or in-states of dead human bodies are arranged and conducted, used and equipped for funeral services, or for the retail sale or display of funeral merchandise, or for the care and preparation and dead human bodies are embalmed or otherwise prepared for a funeral service, visitation, lying in-state, burial or transportation of dead human bodies, or for any or all of the above purposes. A funeral establishment shall be conducted at a fixed and specific street address or location and. If embalming is to be performed, the funeral establishment shall contain a preparation room equipped with a sanitary floor, walls and ceiling, with adequate sanitary drainage and disposal facilities, good ventilation and light, and the necessary instruments, equipment and supplies for the preparation and embalming of dead human bodies for burial or transportation. The

preparation room shall be clearly identified by signs on preparation room entrance doors, shall be separate from the funeral merchandise display room and chapel or visitation room, and shall not be a part of the living quarters. Each funeral establishment must shall have available or employ a Kansas licensed embalmer for all embalming work, if the funeral director in charge of the establishment is not a Kansas licensed embalmer. Each establishment shall be under the personal supervision of a Kansas licensed funeral director.

HB 2772

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(b) The provisions and requirements herein contained shall apply to all branch establishments as well as principal establishments, except that:

(1) Only the funeral director in charge of the funeral establishment who holds the funeral establishment license shall be eligible to apply for a branch establishment license;

(2) a branch establishment is not required to contain a preparation room or to be a place where dead bodies are prepared for burial or transportation;

(3) a branch establishment ownership shall be identical to the ownership of the funeral establishment which owns the branch;

(4) the funeral director responsible for the personal supervision of the funeral establishment also shall be responsible for the supervision of all branches of that funeral establishment; and

(5) a branch establishment is not required to be under the personal supervision and charge of a licensed funeral director.

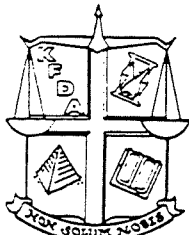
(c) Embalming establishments shall contain a preparation room equipped with a sanitary floor, walls and ceiling with adequate sanitary drainage and disposal facilities, good ventilation and light, and all necessary instruments, equipment and supplies for the preparation and embalming of dead human bodies for burial, cremation and transportation. They shall embalm for licensed funeral establishments and branch establishments and cannot sell any services or merchandise directly or at retail to the public. Each embalming establishment shall be under the personal supervision of a Kansas licensed embalmer and funeral director.

Sec. 4. K.S.A. 65-1726 is hereby amended to read as follows: 65-1726. Every person who shall violate any provision of this act article 17, chapter 65, shall be deemed guilty of a class A nonperson misdemeanor, and upon conviction be fined not less than twenty-five dollars (\$25), nor more than two hundred dollars (\$200), or imprisoned not less than ten (10) days, nor more than ninety (90) days, or both.

Sec. 5. K.S.A. 65-1703, 65-1705, 65-1713a and 65-1726 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

PNW  
2-9-94  
attm # 2-2  
09282



AFFILIATED WITH N.F.D.A.

# THE KANSAS FUNERAL DIRECTORS AND EMBALMERS ASSOCIATION, INC.

EXECUTIVE OFFICE — 1200 KANSAS AVENUE, P.O. BOX 1904

TOPEKA, KANSAS 66601

PHONE 913-232-7789

FAX 913-232-7791

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**BARRY BOGGS**  
Kinsley

## TESTIMONY PRESENTED TO

## HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

ON

## HOUSE BILL NO. 2772

Madam Chair and members of the committee, my name is Pamela Scott, executive director of the Kansas Funeral Directors and Embalmers Association (KFDA). I appear before you today to provide testimony on House Bill No. 2772.

The KFDA supports the amendments to K.S.A. 65-1703, which better define and clarify the degree of supervision a funeral director must exert over a student embalmer and apprentice embalmer.

The amendments to K.S.A. 65-1713a in Section 3 of the bill update the definition of funeral establishment and remove the requirement that a funeral establishment be equipped with a preparation room. A new definition of embalming establishment is added to cover those entities just performing embalming services. This will allow the board to issue a license covering just embalming services.

The only amendment to the definition of funeral establishment contained in Section 3 that the KFDA objects to is the amendment which deletes from the definition "a place of business used for the retail sale or display of funeral merchandise." Such an amendment would allow casket and cremation stores to set up business in a mall or other location and unfairly compete with a funeral establishment without being licensed. Funeral establishments are required to trust 100 percent of monies they receive for the furnishing of personal property or funeral or burial merchandise according to K.S.A. 16-301. Arguably, non-licensed entities selling funeral merchandise would not have to 100 percent trust funds they receive on the sell of such merchandise. This would put them on an unlevel playing field. We can accept the amendments to K.S.A. 65-1713a contained in Section 3 if K.S.A. 16-301 is amended to clarify that all entities selling personal property or funeral or

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2-9-94

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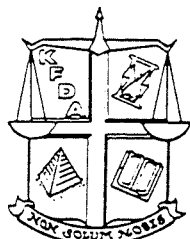
burial merchandise, not just funeral directors and embalmers, must trust all money they receive for such property or merchandise. I have attached a copy of this proposed amendment.

We support the provisions of House Bill No. 2772 with the amendment to K.S.A. 16-301 we are proposing. I will be glad to answer any questions. Thank you for the opportunity to appear before you today.

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attn # 3-2  
273

16-301. CERTAIN PREARRANGED FUNERAL AGREEMENTS; AGAINST PUBLIC POLICY, WHEN; CONDITIONS. Any agreement, contract or plan requiring the payment of money in a lump sum or installments which is made or entered into with any person, association, partnership, firm or corporation for the final disposition of a dead human body, or for funeral or burial services, or for the furnishing of personal property or funeral or burial merchandise, wherein the delivery of the personal property or the funeral or burial merchandise or the furnishing of ~~professional services by a funeral director or embalmer~~ is not immediately required, is hereby declared to be against public policy and void, unless all money paid thereunder shall be deposited in a bank or savings and loan association which is authorized to do business in this state and insured by a federal agency, or invested in a credit union which is insured with an insurer or guarantee corporation as required under K.S.A. 17-2246, and amendments thereto, all as herein provided, and subject to the terms of an agreement for the benefit of the purchaser of the agreement, contract or plan. For the purposes of this act, personal property or funeral or burial merchandise shall include caskets, vaults and all other articles of merchandise incidental to a funeral service, but shall not include grave lots, grave spaces, grave memorials, tombstones, crypts, niches and mausoleums.

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2-3-94  
Attm # 3-3  
Pg 373



AFFILIATED WITH N.F.D.A.

# THE KANSAS FUNERAL DIRECTORS AND EMBALMERS ASSOCIATION, INC.

EXECUTIVE OFFICE — 1200 KANSAS AVENUE, P.O. BOX 1904

TOPEKA, KANSAS 66601

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Topeka

TESTIMONY PRESENTED TO

HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE

ON

HOUSE BILL NO. 2786

## BOARD OF DIRECTORS

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Kinsley

Madam Chair and members of the committee, I am Pamela Scott, executive director of the Kansas Funeral Directors and Embalmers Association (KFDA). The KFDA represents over 250 funeral establishments in the state of Kansas.

I am here to urge your support of House Bill No. 2786, which was introduced by this committee at the request of the KFDA.

House Bill No. 2786 amends Kansas law pertaining to Durable Power of Attorneys for health care decisions. That law allows an individual to authorize an agent to make decisions concerning disposition of the body upon death. The KFDA is requesting an amendment to K.S.A. 58-629 to provide the funeral director with immunity from liability in the event the funeral director follows the directions of a durable power of attorney for health care decisions.

The requested amendment addresses a problem funeral directors are experiencing when the directions concerning disposition of the body made by the agent differ from the wishes of the family. Of particular concern to funeral directors are those situations where the agent directs that a body be disposed of by cremation and the family doesn't want the body to be cremated. The problem lies in that the cremation process is irreversible and there is no remedy once it is completed. When a disagreement arises concerning where a body is to be buried, a remedy is available because the body can be disinterred and reburied in another location.

Traditionally in Kansas the family makes the final decision concerning disposition of the body upon death. There are two Kansas cases addressing who has control over disposition of the body. In *Nelson v. Schoonover*, 89 Kan 779(1913) the court held that a husband's instructions concerning burial should be followed even though his deceased wife left burial

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instructions in her will. The Court in Cordts v. Cordts 154 Kan 354(1941), a case involving a disagreement as to final arrangements, stated "each case must be considered in equity on its own merits." giving importance to the decedent's wishes, but also considering the rights and feelings of the surviving family, with preference to those who were "closely affiliated with and devoted to the decedent in her lifetime."

There are funeral directors from various parts of the state who, upon the advise of counsel, will not accept a case where there is a durable power of attorney involved and the agent for the deceased is requesting cremation unless the family also consents to the cremation. Funeral directors are concerned of possible litigation and liability. There is a trend nationwide toward litigation in this area.

The KFSA is not challenging the legality of a properly executed durable power of attorney. It is merely asking for some protection against liability in the event the provisions of the durable power of attorney are followed. Immunity will discourage litigation in this area.

Thank you for this opportunity to appear before you today. We ask for your support of House Bill No. 2786.

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Alt #4-2  
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***Legislative Information  
for the Kansas Legislature***

**TO:** *House Public Health & Welfare*  
**FROM:** *Ron Smith, General Counsel, KBA*  
**SUBJ:** *HB 2786, durable power of attorney*

**February 8, 1994**

**Summary:**

The Kansas Bar Association has no position on this direct topic.

However, the problem with HB 2786 can be solved short of the proposed amendment in this bill.

**Background:**

There are two durable power of attorney statutes -- the uniform durable power and the durable power for health care decisions. It was our recommendation several years ago when we enacted a durable power of attorney for health care decisions that it be incorporated in the existing regular power of attorney statutes.

That was not done. For a variety of reasons not important here, a separate durable power for health care was created.

KSA 58-613, the uniform

power of attorney statute, states:

"(a) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal's successors in interest.

(b) The disability or incapacity of a principal who has previous executed a written power of attorney that is not a durable power as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest."

This statute has been con-

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strued to mean that a bank, for instance, has no duty to investigate and determine the capacity of the grantor at the time of the execution of a power of attorney before honoring the request for a transfer of bank funds thereunder. *Bank IV Olathe v. Capitol Federal Savings and Loan*, 250 Kan. 541, 828 P.2d 355, at 358 (1992).

What the court appears to imply is a good faith exception and reliance standard. Persons dealing with attorneys in fact who have been designated by a principal to carry out their financial affairs ought to be able to rely on the power of attorney without being liable for paying out funds inappropriately.

The problem is the durable power for health care does not incorporate the good faith exception.

If there was a good faith reliance exception in the durable power of attorney for health care law, then exempting certain persons from lawsuits would be unnecessary. All persons relying on a power of attorney would be given shelter -- unless those persons has reason to know the power of attorney was invalidly drawn -- which is not ordinarily the case with funeral directors.

The problem of going the

way this bill goes, by exempting certain groups, is that it will bring on requests for others to get similar exemptions.

For example, what is the funeral director going to do under HB 2786 if two persons show up, with two apparently valid durable power of attorney for health care, and each agent claims to be the lawful one? Can he act on behalf of the wishes of the first one without regard to the second?

I've checked with respected members of the probate section of the KBA, including Nancy Roush who helped author the durable power of attorney for health care when it was first enacted. They suggest we incorporate in the durable power of attorney for health care a good faith reliance language, and then the proposed amendment would be unnecessary. Funeral directors -- and anyone else -- could act on a valid document without much fear of lawsuits.

KBA would be available to help with language, if that is what you decide to do.

Thank you.

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Attn #5-2  
JG 232



## DIVISION OF THE BUDGET

Room 152-E  
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Topeka, Kansas 66612-1504  
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Joan Finney  
Governor

Gloria M. Timmer  
Director

February 4, 1994

The Honorable Joann Flower, Chairperson  
House Committee on Public Health and Welfare  
Statehouse, Room 426-S  
Topeka, Kansas 66612

Dear Representative Flower:

SUBJECT: Fiscal Note for HB 2772 by House Committee on  
Public Health and Welfare

In accordance with KSA 75-3715a, the following fiscal note  
concerning HB 2772 is respectfully submitted to your committee.

The passage of HB 2772 would clarify the supervision of  
student and apprentice embalmers by licensed embalmers during the  
embalming process. It would update the definition of funeral  
establishments, embalming preparation rooms, and embalming  
establishments. It would also convert the language concerning  
criminal violation of embalming and funeral establishment statutes  
to that contained in the Kansas Sentencing Guidelines Act.

The passage of HB 2772 would have no impact on state revenues  
or expenditures.

Sincerely,

A handwritten signature in cursive script that reads "Gloria M. Timmer".

Gloria M. Timmer  
Director of the Budget

cc: Mack Smith, Mortuary Arts

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P.H.W.  
2-9-94  
Attn #6



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DIVISION OF THE BUDGET

Room 152-E  
State Capitol Building  
Topeka, Kansas 66612-1504  
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FAX (913) 296-0231

Joan Finney  
Governor

Gloria M. Timmer  
Director

February 9, 1994

The Honorable Joann Flower, Chairperson  
House Committee on Public Health and Welfare  
Statehouse, Room 426-S  
Topeka, Kansas 66612

Dear Representative Flower:

SUBJECT: Fiscal Note for HB 2786 by House Committee on  
Public Health and Welfare

In accordance with KSA 75-3715a, the following fiscal note  
concerning HB 2786 is respectfully submitted to your committee.

HB 2786 concerns the liability of funeral establishments,  
funeral directors, embalmers, crematories, or other persons  
responsible for the disposition of a dead body. The passage of HB  
2786 would provide protection from legal or criminal liability for  
the persons and institutions who dispose of a body in the manner  
prescribed by an agent designated under a legally executed durable  
power of attorney for health care decisions for the deceased  
person.

The passage of this bill would have no impact on state  
revenues or expenditures.

Sincerely,

A handwritten signature in cursive script that reads "Gloria M. Timmer".  
Gloria M. Timmer  
Director of the Budget

2786.fn

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