

## SENATE BILL No. 557

By Committee on Public Health and Welfare

2-2

9 AN ACT relating to the Kansas state board of mortuary arts; regulating  
10 crematories; amending K.S.A. 65-1723 and 65-1732 and K.S.A. 1999  
11 Supp. 65-1727 and repealing the existing sections.  
12

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

14 New Section 1. (a) Any person doing business, or any cemetery, fu-  
15 neral establishment or branch establishment, corporation, partnership,  
16 joint venture, voluntary organization or any other entity if licensed under  
17 the authority of this act may erect, maintain and conduct a crematory and  
18 provide the necessary appliances and facilities for the cremation of human  
19 remains in accordance with the provisions of this act.

20 (b) A crematory authority shall be subject to all local, state and federal  
21 health and environment protection requirements and shall obtain all nec-  
22 essary licenses from the state board of mortuary arts.

23 (c) A crematory may be constructed on or adjacent to any cemetery,  
24 in or adjacent to any funeral establishment or branch establishment or at  
25 any other location consistent with local zoning regulations or state laws.

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

28 (e) Applications for crematory authorities in existence prior to the  
29 effective date of this act shall be provided to the state board of mortuary  
30 arts with the following information:

31 (1) The full name and address, both residence and business, of the  
32 applicant, if the applicant is an individual, the full name and address of  
33 every member and the business, if the applicant is a partnership, the full  
34 name and address of every member of the board of directors and the  
35 business, if the applicant is an association, and the name and address of  
36 every officer and director;

37 (2) the address and location of the crematory;

38 (3) evidence confirming the date the cremation authority was  
39 established;

40 (4) a description of the type of structure and equipment being used  
41 in the operation of the crematory;

42 (5) copies of all current licenses and permits required for a crematory  
43 to operate; and

1 (6) any further information that the state board of mortuary arts rea-  
2 sonably may require.

3 (f) Applications for new crematory authorities shall be submitted in  
4 writing on forms provided by the state board of mortuary arts and shall  
5 contain the following:

6 (1) The full name and address, both residence and business, of the  
7 applicant, if the applicant is an individual, the full name and address of  
8 every member and the business, if the applicant is a partnership, the full  
9 name and address of every member of the board of directors and the  
10 business, if the applicant is an association, and the name and address of  
11 every officer and director;

12 (2) The address and location of the crematory;

13 (3) a description of the type of structure and equipment to be used  
14 in the operation of the crematory;

15 (4) copies of all applications for and any licenses or permits issued  
16 for a crematory to operate; and

17 (5) any further information that the state board of mortuary arts rea-  
18 sonably may require.

19 (g) Each crematory authority shall submit a biennial renewal appli-  
20 cation and report with the state board of mortuary arts, accompanied with  
21 a fee fixed by the state board of mortuary arts under K.S.A. 1999 Supp.  
22 65-1727 and amendments thereto and shall be due and paid to the state  
23 board of mortuary arts on or before the expiration date of such license.  
24 The disposition of all funds collected under the provision of this act shall  
25 be in accordance with the provisions of K.S.A. 65-1718 and amendments  
26 thereto.

27 (h) Each crematory authority license shall expire every two years on  
28 a date established by the state board of mortuary arts by duly adopted  
29 rules and regulations.

30 (i) It is unlawful for any person who does not hold a crematory au-  
31 thority license to operate, offer to operate, advertise or represent oneself  
32 as operating a crematory.

33 New Sec. 2. Except as otherwise provided in this section, a crema-  
34 tory authority shall not cremate human remains until it has received:

35 (1) A cremation authorization form signed by an authorizing agent.  
36 The cremation authorization form shall be provided by the crematory  
37 authority and shall contain, at a minimum, the following information:

38 (A) The identity of the human remains and the time and date of  
39 death;

40 (B) the name of the funeral director or assistant funeral director and  
41 the funeral establishment or branch establishment or the authorizing au-  
42 thority if self motivated, that obtained the cremation authorization;

43 (C) notification as to whether the death occurred from a disease de-

1 clared by the department of health and environment to be infectious,  
2 contagious, communicable or dangerous to the public health;

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

5 (E) authorization for the crematory authority to cremate the human  
6 remains;

7 (F) a representation that the human remains do not contain a pace-  
8 maker or any other material or implant that may be potentially hazardous  
9 or cause damage to the cremation chamber or the person performing the  
10 cremation;

11 (G) the name of the person authorized to receive the cremated re-  
12 mains from the crematory authority; and

13 (H) the signature of the authorizing agent attesting to the accuracy  
14 of all representations contained on the cremation authorization form;

15 (2) a completed and executed coroner's permit to cremate, as pro-  
16 vided in K.S.A. 1999 Supp. 65-2426a and amendments thereto, indicating  
17 that the human remains are to be cremated.

18 New Sec. 3. (a) No body shall be cremated with a pacemaker or  
19 other potentially hazardous implant in place. The authorizing agent for  
20 the cremation of the human remains shall be responsible for informing  
21 the licensed funeral director, assistant funeral director or embalmer about  
22 a pacemaker or other potentially hazardous implant. The authorizing  
23 agent shall be ultimately responsible for ensuring that any pacemakers or  
24 hazardous implants are removed prior to cremation. Bodies with pace-  
25 makers or hazardous implants in the custody of a crematory authority  
26 shall have pacemakers or hazardous implants removed by an embalmer  
27 at a funeral establishment or branch establishment with an embalming  
28 preparation room unless the removal is to take place at a medical facility  
29 by the appropriate medical personnel.

30 (b) A crematory authority shall hold human remains, prior to their  
31 cremation, according to the following provisions of this subsection:

32 (1) Whenever a crematory authority is unable to cremate the human  
33 remains immediately upon taking custody thereof the crematory authority  
34 shall place the human remains in a refrigeration facility at 40 degrees  
35 fahrenheit or less, unless the human remains have been embalmed or  
36 store the human remains which shall be placed in a cremation container  
37 at a funeral establishment or branch establishment that is inspected by  
38 the state board of mortuary arts; and

39 (2) a crematory authority shall not be required to accept for holding  
40 a cremation container from which there is any evidence of leakage of  
41 body fluids from the human remains therein.

42 (c) No unauthorized person shall be permitted in the crematory area  
43 while any human remains are in the crematory area awaiting cremation,

1 being cremated or being removed from the cremation chamber.

2 (d) The unauthorized simultaneous cremation of human remains of  
3 more than one adult person within the same cremation chamber is not  
4 allowed or usually possible but it will never be performed even if possible  
5 unless the crematory authority shall have received specific written au-  
6 thorization to do so from all authorizing agents for the human remains to  
7 be so cremated. The simultaneous cremation of the human remains of  
8 one adult and one or more children will not be performed unless the  
9 crematory authority shall have received specific written authorization to  
10 do so from all authorizing agents for the human remains to be so cre-  
11 mated. A written authorization shall exempt the crematory authority from  
12 all liability for commingling of the product during the cremation process.

13 (e) Immediately prior to being placed within the cremation chamber  
14 the identification of the human remains as indicated on the cremation  
15 container shall be verified by the crematory authority and the identifi-  
16 cation shall be removed from the cremation container and placed near  
17 the cremation chamber control panel where it shall remain in place until  
18 the cremation process is complete.

19 (f) Upon completion of the cremation and in so far as is possible all  
20 of the recoverable residue of the cremation process shall be removed  
21 from the cremation chamber. Insofar as possible all residual of the cre-  
22 mation process shall then be separate from anything other than bone  
23 fragments and then be processed so as to reduce them to an unidentifiable  
24 particle. Anything other than the particles shall be removed from the  
25 cremated residuals as far as possible and shall be disposed of by the  
26 crematory authority.

27 (g) Cremated remains shall be packed according to the following pro-  
28 visions of this subsection:

29 (1) The cremated remains with proper identification shall be placed  
30 in a temporary container or urn. The temporary container or urn contents  
31 shall be packed in clean packing materials and not be contaminated with  
32 any other object unless specific written authorization has been received  
33 from the authorizing agent or as provided in subsection (2) of this part;

34 (2) if the cremated remains will not fit within the dimensions of a  
35 temporary container or urn, the remainder of the cremated remains shall  
36 be returned to the authorizing agent or its representative in a separate  
37 container attached together with the first container or urn with both being  
38 marked as being together;

39 (3) when a temporary container is used to return the cremated re-  
40 mains that container shall be placed in a suitable box and all box seams  
41 taped closed to increase the security and integrity of that container. The  
42 outside of the container shall be clearly identified with the name of the  
43 cremation authority and an indication the container is a temporary con-

1 tainer; and

2 (4) if the cremated remains are to be shipped the temporary con-  
3 tainer or designated receptacle ordered by the authorizing agent shall be  
4 packed securely in a suitable and sturdy container which is not fragile and  
5 is sealed properly. Cremated remains shall be shipped only by a method  
6 which has an internal tracing system available and which provides a re-  
7 ceipt signed by the person accepting delivery.

8 New Sec. 4. (a) Any person signing a cremation authorization form  
9 as an authorizing agent shall be deemed to warrant the truthfulness of  
10 any facts set forth in the cremation authorization form including the iden-  
11 tity of the deceased whose remains are sought to be cremated and that  
12 person's authority to order such cremation. Any person signing a cre-  
13 mation authorization form as an authorizing agent shall be personally and  
14 individually liable for all damage occasioned thereby and all damage oc-  
15 casioned thereby and resulting therefrom. A crematory authority and a  
16 funeral director may rely upon the representations of the authorizing  
17 agent in the cremation authorization form.

18 (b) A funeral director or assistant funeral director shall have the au-  
19 thority to arrange the cremation of human remains upon the receipt of a  
20 cremation authorization form signed by an authorizing agent. A crematory  
21 authority shall have authority to cremate human remains upon the receipt  
22 of a cremation authorization form signed by an authorizing agent. There  
23 shall be no liability for a funeral director, assistant funeral director or  
24 crematory authority that pursuant to such authorization arranges a cre-  
25 mation, cremates human remains pursuant to such authorization or that  
26 releases or disposes of the cremated remains pursuant to such  
27 authorization.

28 (c) A funeral director or assistant funeral director that refuses to ar-  
29 range a cremation and a crematory authority that refuses to accept a body  
30 or to perform a cremation shall not be liable for refusing to accept a body  
31 or to perform a cremation until they receive a court order or other suitable  
32 confirmation that a dispute has been settled if:

33 (1) They are aware of any dispute concerning the cremation of human  
34 remains; or

35 (2) they have a reasonable basis for questioning any of the represen-  
36 tations made by the authorizing agent; or  
37 (3) for any other lawful reason.

38 New Sec. 5. If an authorizing agent informs the funeral director or  
39 assistant funeral director and the cremation authority on the cremation  
40 authorization form of the presence of a pacemaker in the human remains  
41 then the funeral director or assistant funeral director also shall be re-  
42 sponsible for ensuring that all necessary steps have been taken to remove  
43 the pacemaker before delivering the human remains to the crematory.

1 Should the funeral director or assistant funeral director who delivers the  
2 human remains to the crematory fail to ensure that the pacemaker has  
3 been removed from the human remains pursuant to subsection (b) of  
4 section 3 and amendments thereto, prior to delivery and should the hu-  
5 man remains be cremated with the pacemaker, then the funeral director  
6 or assistant funeral director who delivered the human remains to the  
7 crematory shall also be liable for all resulting damages along with the  
8 authorizing agent.

9 New Sec. 6. (a) The state board of mortuary arts may adopt, prom-  
10 ulgate, amend and repeal such reasonable regulations as may be consis-  
11 tent with this act governing the cremation of human beings. Such regu-  
12 lations specifically shall include the conditions under which human  
13 remains of persons dying from an infectious, contagious, communicable  
14 or dangerous disease can be transported from any portion of the state to  
15 a crematory for the purpose of cremation and minimal standards of san-  
16 itation, required equipment and fire protection for all crematories which  
17 the state board of mortuary arts may deem necessary for the protection  
18 of the public.

19 (b) A crematory authority may enact reasonable rules and regulations  
20 not inconsistent with this act for the management and operation of a  
21 crematory, the types of cremation containers it will accept, authorization  
22 forms required, witnesses to a cremation and similar provisions. Nothing  
23 in this provision shall prevent a crematory authority from enacting rules  
24 and regulations which are more stringent than the provision contained in  
25 this act.

26 (c) Denial, suspension or revocation of license or censure of a li-  
27 censee shall be based on the following violations of this act as follows:

28 (1) Maintenance or operation of a building or structure within the  
29 state of Kansas as a crematory in violation of the provisions of this act or  
30 the rules and regulations of the state board of mortuary arts adopted  
31 pursuant thereto is hereby declared to be a public nuisance and may be  
32 abated as such as provided by law;

33 (2) holding oneself out to the public as a crematory authority without  
34 being licensed under this act or performing a cremation without a cre-  
35 mation authorization form signed by an authorizing agent is hereby de-  
36 clared to be a class A nonperson misdemeanor;

37 (3) signing a cremation authorization form with the actual knowledge  
38 that the form contains false or incorrect information is hereby declared  
39 to be a class A nonperson misdemeanor; or

40 (4) a violation of any other provision of this act is hereby declared to  
41 be a class A nonperson misdemeanor.

42 New Sec. 7. (a) This act shall be construed and interpreted as a com-  
43 prehensive cremation statute and the provisions of this act shall take pre-

evidence over any existing laws that govern dead human bodies and human remains that do not specifically address cremation.

(b) A crematory authority shall be permitted to employ a licensed funeral director for the purpose of arranging cremations with the general public, transporting human remains to the crematory and processing all necessary paperwork. No aspect of this provision shall be construed to require a licensed funeral director to perform any functions not otherwise required by law to be performed by a licensed funeral director.

Sec. 8. 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 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 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. 9. 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. 1999 Supp. 65-2401 and amendments thereto, if after a period of 199 90 days from the time of cremation the cremated remains have not been claimed, the funeral establishment has may dispose of the cremated remains: (a) If the funeral establishment has sent by certified mail, return receipt requested, at least 30 days prior to

may order any lawful manner of final disposition of a decedent's remains, including burial, cremation, entombment or anatomical donation:

(1) The agent for health care decisions established by a durable power of attorney for health care decisions pursuant to K.S.A. 58-625, et seq., and amendments thereto, if any such power of attorney conveys to the agent the authority to make decisions concerning disposition of the deceased's body;

(2) the spouse of the decedent; or

(3) the decedent's surviving adult children. If there is more than one adult child, any adult child who confirms in writing that all other adult children do not object may serve as the authorizing agent unless the crematory authority receives written objection to the cremation from another adult child;

(4) the decedent's surviving parents;

(5) the persons in the next degree of kinship under the laws of descent and distribution to inherit the estate of the deceased. If there is more than one person of the same degree any person of that degree may direct the manner of disposition;

(6) a guardian of the person of the decedent at the time of such person's death;

(7) the personal representative of the deceased; or

(8) in accordance with K.S.A. 1999 Supp. 22a-215 and amendments thereto, in the case of indigents or any other individual whose final disposition is the responsibility of the state or county.

(b) A funeral director, funeral establishment or crematory shall not be subject to criminal prosecution or civil liability for carrying out the otherwise lawful instructions of the decedent or the person or persons under subsection (a) if the funeral director reasonably believes such person is entitled to control final disposition.

Sec. 16. K.S.A. 65-1723 and 65-1732 and K.S.A. 1999 Supp. 65-1727 are hereby repealed.

Sec. 17. This act shall take effect and be in force from and after January 1, 2001, and its publication in the statute book.

1 the end of such period of time to the last known address of the responsible  
 2 ~~person who directed and provided for the method of final disposition of~~  
 3 ~~the dead human remains authorizing agent~~ a notice that such remains  
 4 will be disposed of in accordance with the provisions of this section unless  
 5 claimed prior to the end of the ~~one-hundred-twenty-day~~ 90-day period  
 6 of time; and (b) if the remains have not been claimed prior to the end of  
 7 such period of time. Such disposal shall include *burial by placing the*  
 8 *remains in a church or cemetery scatter garden or pond, or placing*  
 9 *them in a church columbarium or otherwise disposing of the remains as*  
 10 *provided by rule and regulation of the board of mortuary arts; and (c)*  
 11 *this disposition may include the commingling of the cremated remains*  
 12 *with other cremated remains and thus the cremated remains would not*  
 13 *be recoverable.*

14 Sec. 10. K.S.A. 1999 Supp. 65-1727 is hereby amended to read as  
 15 follows: 65-1727. (a) On or before October 15 of each year, the state  
 16 board of mortuary arts shall determine the amount of funds that will be  
 17 required during the next ensuing two years to properly administer the  
 18 laws which the board is directed to enforce and administer under the  
 19 provisions of article 17 of chapter 65 of the Kansas Statutes Annotated,  
 20 and acts amendatory of the provisions thereof and supplemental thereto,  
 21 and by rules and regulations shall fix fees in such reasonable sums as may  
 22 be necessary for such purposes within the following limitations:

- 23 Embalmers examination fee, not more than..... \$500 300
- 24 Embalmers reciprocity application fee, not more than ..... 300 400
- 25 Funeral directors examination fee, not more than ..... 300 300
- 26 Funeral directors reciprocity application fee, not more than..... 300 400
- 27 *Embalmers/funeral directors reciprocity application fee, not more than...* 400
- 28 Assistant funeral directors application fee, not more than..... 100 200
- 29 Embalmers license and renewal fee, not more than ..... 150 250
- 30 Funeral directors license and renewal fee, not more than ..... 250 350
- 31 Assistant funeral directors license and renewal fee, not more than ..... 200 300
- 32 Apprentice embalmers registration fee, not more than ..... 100 150
- 33 Funeral establishment license fee, not more than..... 500 800
- 34 Branch establishment license fee, not more than ..... 500 800
- 35 *Crematory license fee, not more than.....* 800
- 36 *Funeral establishments/funeral/crematory license fee, not more than.....* 1,000
- 37 *Branch establishments/crematory license fee, not more than.....* 1,000
- 38 Duplicate licenses..... 20
- 39 Rulebooks ..... 20
- 40 Continuing education program sponsor applications..... 25
- 41 Continuing education program licensee applications ..... 25
- 42 At least 30 days prior to the expiration date of any license issued by the  
 43 board, the board shall notify the licensee of the applicable renewal fee

1 therefor.  
 2 (b) The fees established by the board under this section immediate  
 3 prior to the effective date of this act shall continue in effect until  
 4 fees are fixed by the board by rules and regulations as provided in  
 5 section.

6 (c) Fees paid to the board are not refundable.

7 New Sec. 11. (a) The individual in charge of a crematory, as def  
 8 by section 12 and amendments thereto, located or doing business wi  
 9 the state shall apply for and obtain a crematory license, as appropri  
 10 from the state board of mortuary arts for each location within the s  
 11 of such crematory.

12 (b) An application for a new license is required if the crema  
 13 changes ownership, name or location.

14 (c) The crematory license fee shall be fixed by the state boar  
 15 mortuary arts under K.S.A. 1999 Supp. 65-1727 and amendments ther  
 16 and shall be due and paid to the state board of mortuary arts on or bel  
 17 the expiration date of such license. The disposition of all funds collec  
 18 under the provision of this act shall be in accordance with the provisi  
 19 of K.S.A. 65-1718 and amendments thereto.

20 (d) Each crematory license shall expire every two years on a c  
 21 established by the state board of mortuary arts by duly adopted rules  
 22 regulations.

23 (e) It is unlawful for any person who does not hold a crematory  
 24 cense to operate, offer to operate, advertise or represent oneself as  
 25 erating a crematory.

26 (f) The Kansas university medical center shall be exempt from t  
 27 statute for the purpose of cremating remains donated for dissecting, de  
 28 onstrating or teaching purposes.

29 New Sec. 12. (a) A "crematory," as the term is used herein, i  
 30 business premises that houses the cremation chamber where dead hun  
 31 bodies are cremated. A crematory shall be maintained at a fixed  
 32 specific street address. The cremation chamber shall be clearly identifi  
 33 by signs on all entrance doors, shall be separate from any merchand  
 34 display room, chapel or visitation rooms and shall not be a part of a  
 35 living quarters.

36 New Sec. 13. The state board of mortuary arts shall adopt rules a  
 37 regulations for the administration of this act.

38 New Sec. 14. It shall be unlawful for any officer or agent of a  
 39 crematory required to pay the cremation license fee authorized by t  
 40 provision of this act to fail, neglect or refuse to pay such fee. Any offi  
 41 or agent of such crematory who fails, neglects or refuses to pay such f  
 42 shall be guilty of a class B misdemeanor.

43 New Sec. 15. (a) The following persons in order of priority stat