



OHIO FUNERAL DIRECTORS ASSOCIATION

Ohio Senate Workforce and Higher Education Committee Statement from OFDA Past President Bradley J. Chute, CFSP, CCO on Substitute House Bill 509

November 30, 2022

Good afternoon Chairman Johnson, Vice Chairman Cirino, Ranking Member Martin and members of the Committee. My name is Brad Chute and I am a past president of the Ohio Funeral Directors Association (OFDA); I am also an active member of the National Funeral Directors Association. I have been a licensed funeral director and embalmer in the State of Ohio since 2004 and I am a certified crematory operator. My family operates three funeral home locations in Licking and Muskingum Counties. I am here today on behalf of OFDA, which proudly represents nearly 1,000 funeral homes and over 4,300 professional licensees employed by those firms, residing in all of Ohio's 88 counties.

I am here today to express our concerns with the substitute version of House Bill 509. While our entire association recognizes that this bill and the accompanying report are extremely well-intended, we are concerned with many of the items that would dramatically and negatively impact our industry, each of which I will briefly address. I have also included a fact sheet with my testimony that summarizes our specific concerns.

Merging Different Professional Licenses Into a Singular License

The bill proposes merging the currently separate licenses for funeral directors and embalmers into one. We do not believe it would be prudent to combine these into one license as these are two separate and distinct professions: funeral directors are the licensed individuals who direct or supervise funerals, direct the arrangement or sale of funeral services and goods, execute funeral service contracts, and care for the surviving family members. Embalmers are the licensees physically handling, preparing and embalming deceased human remains.

More than 1,000 Ohioans hold *funeral director only* licenses – these may include individuals who want to focus on caring for grieving families. This includes mid-career community members like retired military and law enforcement, or simply individuals who do not have the desire or aptitude to prepare deceased human remains.

In our funeral home, we have recently had an unlicensed team member complete the requirements for licensure as a funeral director only. He will be taking his State Board Exam in the coming weeks. Funeral service is a second career for him, and he has a young family. In his case and in numerous others across the State, if he had been required to attend Mortuary College so he met the requirements to be an embalmer, he would not have become a funeral director.

Therefore, if the embalmer and funeral director licenses are combined, requiring all prospective licensees to attend mortuary school, we fear this would discourage most if not all prospective funeral director only licensees from this role serving their communities, potentially preventing them from participating in Ohio's workforce. This would be a true detriment to our profession and Ohio's economy.

Removing the Bachelor's Degree Requirement for Funeral Directors and Embalmers

OFDA strongly opposes removing the bachelor's degree requirement to be licensed in Ohio, most notably because of how our profession is required to interact with the United States Department of Labor (DOL). The DOL has recognized that funeral directors and embalmers in Ohio qualify for the White Collar Exemption under the federal Wage and Hour laws because our profession requires a bachelor's degree. This allows funeral licensees in Ohio to be paid a salary, instead of an hourly wage and overtime pay, as required by federal Wage and Hour laws.

This exemption is extremely valuable to funeral homes. Many are small businesses like our family funeral home. Because their workload varies greatly from week-to-week depending upon demand, this allows us to have stable budgets and protects employees by giving them a salary even when there are fluctuations in work. The availability of the White Collar Exemption to Ohio's 1,000 funeral homes also relieves them from significant governmental regulation and administrative headaches when compensating licensees. Over the past 20 years, Ohio funeral homes have avoided a multitude of Fair Labor Standards Act lawsuits as a direct result of the White Collar Exemption.

We have also expressed similar concerns with this provision as the bachelor's degree requirement is also being proposed for elimination in Senate Bill 131 and House Bill 203. Both bills seek to offer easier license reciprocity for out of state licensees. **In concept, we support this idea, and our Board is currently proactively seeking rule changes pending at the Common Sense Initiative to make it easier for well-qualified individuals from out of state to be licensed here more quickly.** But we are deeply concerned that removing the bachelor's degree requirement entirely would have an unintended consequence in our line of work, potentially opening up our profession to litigation between Ohio licensees with a bachelor's degree and those granted a reciprocal license without it, especially if their compensation is different.

Changes to Crematory Permitting

Just a few years ago, OFDA and the OBEFD asked the legislature to require the individual crematory *operator* to be licensed, in addition to the crematory facility. We did so to be certain that the person operating the crematory is properly trained. Crematory operators must have certification and training provided by one of three national entities before they are granted licensure. This separate license exists not merely for funeral directors or embalmers, but otherwise unlicensed staff members who have no additional training. As cremation rates increase across the United States, and liability concerns increase, the importance of proper training for crematory operators is even more important. I recently had discussions with colleagues in South Carolina who are looking to model Ohio's current law because of issues their state is having with individuals who are not properly trained to operate a crematory. If we are unique among our neighboring states with regard to this licensure it is because we are *leading* our profession, which has so often been the case.

Legislatively Mandated Reduction in Continuing Education Requirements

Under Ohio Revised Code Section 4717.09, the Ohio Board of Embalmers and Funeral Directors has the discretion to require a *minimum* of twelve hours up to a *maximum* of thirty continuing education hours. Substitute House Bill 509 would require continuing education units to be firmly at 12 hours with no discretion to increase or decrease that amount. As a practitioner in this profession every day, I can tell you that the funeral industry is constantly evolving. Our licensed funeral directors and embalmers have to interact and be familiar with rules and regulations from the Ohio Departments of Health and Commerce as well as the Ohio Environmental Protection Agency and Federal Trade Commission, among others. It is critical that our industry professionals are provided with the most up to date information through our robust, but not overburdensome, continuing education requirements.

OFDA respectfully asks to keep our continuing education requirements the way they are in current law so that we can have the ability to adapt as needed without having to come back to the legislature to make changes. We want to ensure we have the highest trained professionals in the country, as they care for Ohioans' loved ones.

Reduction in Licensing Fees

The Ohio Board of Embalmers and Funeral Directors is a self-sustaining, non-GRF funded agency. A reduction in this fee would substantially reduce our agency's ability to accomplish their mission and administer oversight to our industry.

Other states around the country charge much higher license fees than Ohio – Pennsylvania is at \$400, and Tennessee is at \$435. Our association and our affiliated board do not believe our fees are overburdensome to funeral directors and embalmers and are not seeking a change in our current fee structure.

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Again, thank you Chairman Johnson and members of the Committee for hearing our concerns today on Substitute House Bill 509. I would be remiss if I didn't also thank you all, particularly Senator Jerry Cirino, for your tireless work on Senate Bill 224 which was signed by the Governor earlier this year. The bill made two dozen substantive improvements to our profession. I would be pleased to answer any questions you may have about our concerns brought before you today.



OHIO FUNERAL DIRECTORS ASSOCIATION

Who We Are

OFDA represents nearly **1,000** funeral homes and its professionals. There are **4,313** funeral directors, and **3,226** embalmers in the state with a presence in all of Ohio's counties.

Opposition to Sub. House Bill 509

While our membership appreciates the review done by the General Assembly on our occupational licensing requirements, we, along with our partners at the Ohio Board of Embalmers and Funeral Directors (OBEFD) **strongly oppose the language in Substitute House Bill 509** (I_134_3016).

Opposition to Sub. House Bill 509

We agree that minimizing bureaucratic workforce interference, eliminating redundancy, and increasing competitiveness are worthy goals that both OFDA and the OBEFD share with the General Assembly. However, in Ohio, the Association and Board believe that impacts of enacting Substitute House Bill 509 will have the opposite intended effect.

Oppose Merging of Different Professions Into Single License

RATIONALE: Funeral directors and embalmers are two completely separate professions and would not be prudent to combine them into one license. **Funeral directors** are the licensed individuals who direct or supervise funerals, direct the arrangement or sale of funeral services and goods, execute funeral service contracts, and care for the surviving family members during their most vulnerable moments through grieving processes.

Embalmers handle deceased human remains and treat them with chemicals to reduce the presence of microorganisms and slow decomposition prior to internment. The embalmers are preserving the dead for surviving families to properly grieve their loved ones

Contrary to popular belief, not all funeral directors are embalmers. More than 1,000 Ohioans hold funeral director only licenses - these may include individuals who want to focus on the grieving families and can include mid-career community members (i.e. retired teachers or law enforcement) or retired individuals who do not want to undergo the science education to become an embalmer.

Therefore, if the embalmer and funeral director licenses are combined, this would have the net effect of requiring these individuals to attend mortuary school, likely discouraging most or all of them from serving in this role, serving their communities and potentially not participating in Ohio's workforce. This would be a true detriment to the profession and Ohio's economy.

OFDA/OBEFD Oppose the Following Provisions in Sub. House Bill 509

Removing Bachelor's Degree Requirement for Funeral Directors & Embalmers

RATIONALE: The U.S. Department of Labor (DOL) has recognized that funeral directors and embalmers in Ohio qualify for the **White Collar Exemption** under the federal Wage and Hour laws (69 Fed. Reg. 22155 (4/23/2004)) because our profession requires a bachelor's degree. This allows funeral licensees in Ohio to be paid a salary, instead of an hourly wage and time-and-a-half overtime pay, as required by federal Wage and Hour laws.

This exemption is extremely valuable to funeral homes (many as small business owners) because their workload varies greatly from week-to-week depending upon demand. It allows us to have stable budgets and also protects employees by giving them a guaranteed salary even when there are downturns at the funeral home.

The availability of the White Collar Exemption to Ohio's 1,000 funeral homes also relieves them from significant governmental regulation and administrative headaches when compensating licensees. Over the past 20 years, Ohio funeral homes have avoided a multitude of Fair Labor Standards Act lawsuits as a direct result of the White Collar Exemption.

Changes to Crematory Permitting

RATIONALE: In 2017, OFDA and the OBEFD asked the legislature to require the individual crematory operator to be licensed, in addition to the crematory facility, because we want to be certain that the person operating the crematory is properly trained. Crematory operators must have certification and training provided by one of three national entities before they are granted licensure. This separate license exists not for funeral directors or embalmers but otherwise unlicensed staff members who have no additional training.

As cremation rates increase across the United States, South Carolina is looking at modeling Ohio's current law because of issues the state is having with individuals who are not properly trained to operate a crematory.

Reduction in Continuing Education Hours

RATIONALE: The funeral industry is evolving and changing regularly. Funeral directors and embalmers have to interact and be familiar with rules and regulations from the Ohio Department of Health, Ohio Environmental Protection Agency, the Federal Trade Commission, among other agencies. It is critical that our industry professionals are provided with the most up to date information through our robust, but not overburdensome, continuing education requirements.

OFDA and OBEFD respectfully ask to keep our continuing education requirements so that we can have the highest trained professions in the country, as they are caring for Ohioans' loved ones.

Reduction in Licensing Fees

RATIONALE: The Ohio Board of Embalmers and Funeral Directors is a non-GRF funded agency. A reduction in this fee would substantially reduce our agency's ability to appropriately review proposed administrative rules, review applications, issue licenses, approve continuing education programs, target fraud, ensure compliance with state and federal laws, take disciplinary action and conduct apprentice interviews, among other duties.

Other states around the country charge much higher license fees than Ohio (**Pennsylvania:** \$400; **Tennessee:** \$435).