



## Ohio Funeral Directors Association

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# OHIO FUNERAL DIRECTORS ASSOCIATION SENATE BILL 246 – LICENSURE RECOGNITION INTERESTED PARTY TESTIMONY

BEFORE THE SENATE GENERAL GOVERNMENT AND  
AGENCY REVIEW COMMITTEE

February 12, 2020

Chairman Schuring, Vice-Chair Rulli and Ranking Member O'Brien, I am John McGough and I am appearing in my capacity as the Legislative Agent of the Ohio Funeral Directors Association (OFDA). OFDA welcomes this opportunity to express the concerns of its membership with respect to SB 246, a bill that would allow individuals from out-of-state to become licensed Ohio funeral directors without meeting Ohio's educational, testing, and internship requirements.

**Introduction.** OFDA is a statewide association of approximately 1,000 funeral homes and 2,500 funeral professionals throughout the State of Ohio. The Association is a strong proponent of consumer protection laws in the funeral market. OFDA has taken the lead in supporting comprehensive preneed funeral legislation (that has been enacted into Ohio law) that protects the hundreds of millions of dollars consumers have pre-paid to Ohio funeral homes. In fact, the National Funeral Directors Association has given Ohio's preneed funeral statutes its highest rating for consumer protection laws.

**License Diminishment.** In addition to strong consumer laws regulating the funeral profession,

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Ohio also has one of the highest licensing standards for funeral directors and embalmers in the country. Ohio is one of only two states that require a bachelor's degree as the educational minimum for licensure. In addition, Ohio also requires completion of a mortuary science program, successful passage of the National Board Examination, and one year of internship to be a licensed embalmer.

**There does not appear to be any evidence that Ohio's licensure laws have been a barrier to people who want to become a licensed funeral director or embalmer in Ohio.**

Ohio's strong licensing requirements (with substantial consumer protections) stand in stark contrast to several other states, including neighboring Kentucky. In Kentucky and seven other states, an individual may be licensed as a funeral director with no more than a high school education.<sup>1</sup> Therefore, if SB 246 is enacted in its current form, an individual with no post-secondary education could obtain his or her funeral director license in Kentucky, work a year, and then qualify for full licensure as an Ohio funeral director. OFDA and its membership oppose the watering down of their licenses that would result from passage of SB 246 in its current form.

**Exemption from Wage and Hour Laws.** Beyond the diminishment of the funeral director and embalmer licensing requirements, SB 246 could wreak havoc with the way every Ohio funeral home compensates its licensed employees. Prior to 2004, the U.S. Department of Labor (DOL) regarded funeral directors and embalmers as hourly employees who did not qualify for the professional exemption under federal wage and hour laws. This required funeral homes to pay their employees overtime compensation whenever they worked in excess of 40 hours per week.

In 2004, the DOL updated the White-Collar exemptions which govern the exemptions from wage and hour laws (69 Fed. Reg. 22,122, 22,155-56 April 23, 2004). In that rulemaking, the DOL recognized for the first time that depending upon the academic and licensing requirements for funeral directors and embalmers in a particular state, licensees working in that state could qualify for the professional exemption. In that regard, DOL enacted 29 CFR 541.301(e)(9) which provides as follows:

“Licensed funeral directors and embalmers who are licensed by and working in a state that requires **successful completion of four academic years of pre-professional and professional study, including graduation from a college of mortuary science accredited by the American Board of**

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<sup>1</sup> The states of Arkansas, Colorado, Delaware, Hawaii, Kentucky, Mississippi, Missouri and Nevada require no post-secondary education in order to become a funeral director.

**Funeral Service Education**, generally meet the duties requirements for the learned professional exemption.” [Emphasis supplied]

Since Ohio is one of only two states requiring a bachelor’s degree for funeral licensure, the DOL regulation allowed Ohio funeral homes to treat all of their licensed employees as professionals, exempt from federal wage and hour law. This permitted funeral homes to pay salaries, eliminate the administrative burdens of tracking employee times, and, most importantly, avoid having to pay overtime compensation. This is critical in a profession where hours will fluctuate greatly depending upon the number of funerals that a funeral home will be called upon to perform. One week, a small funeral home conducting four funerals may have its licensees working over 50 hours that week while the next week with no funerals the licensee may work only 20-25 hours.<sup>2</sup>

If SB 246 is enacted in its current version, individuals who are licensed in other states that require less than four years of post-secondary education will qualify for Ohio funeral director licenses. This could lead to a successful court or administrative law ruling that the DOL regulation no longer applies to Ohio funeral licensees since licensing is available to individuals without four years of post-secondary education. Such a ruling would cause Ohio’s 2,500 funeral licensees to lose their professional exemption. It would also result in widespread disruption of employee compensation and scheduling systems for the more than 1,000 Ohio funeral home businesses that have relied upon the DOL ruling for the past 16 years.

For the reasons stated above, OFDA and its funeral home and funeral director members respectfully request to be excluded from the requirements of SB 246.

Respectfully submitted,

OHIO FUNERAL DIRECTORS ASSOCIATION

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<sup>2</sup> Although Ohio requires a bachelor’s degree in order to be a licensed funeral director and embalmer, the compensation paid to Ohio funeral directors and embalmers is not substantially above the average compensation paid to funeral licensees in the U.S. The DOL report that in 2018, the mean average compensation paid to funeral professionals in the country was \$52,560. In Ohio, the DOL reported that the mean compensation was \$55,460. Therefore, Ohio funeral directors make approximately 5.5% more than the average funeral director in the U.S.