

Ohio Funeral Directors Association
Devin Woodyard, Immediate Past President
Opponent Testimony – House Bill 203
June 9, 2021

INTRODUCTION

Thank you Chairman Wiggam and members of the committee. My name is Devin Woodyard and I am with the O.R. Woodyard Company funeral homes in Central Ohio. I am here today to offer testimony in strong opposition to House Bill 203 on behalf of the Ohio Funeral Directors Association (OFDA), where I serve as the President of the Board. OFDA is the largest funeral association in the State and represents nearly 1,000 funeral homes and 2,500 funeral professionals.

OFDA understands that the overall objective of HB 203 is to attract a willing and able workforce for Ohio businesses. As an association representing nearly 1,000 small and medium sized family owned businesses in Ohio, OFDA appreciates the General Assembly's efforts to increase the available pool of potential employees for Ohio businesses. Attracting qualified individuals to the funeral profession is one of the reasons that OFDA has provided hundreds of thousands of dollars in scholastic tuition assistance over the years to applicants at the Cincinnati College of Mortuary Science and the Pittsburgh Institute of Mortuary Science, two of the leading mortuary science programs in the country. Many, if not most, Ohio funeral directors and embalmers are graduates of these two mortuary science colleges.

**SIDESTEPPING LICENSING
REQUIREMENTS**

OFDA's strong opposition to HB 203 is driven by two overall concerns. First and foremost, watering down Ohio's high funeral director and embalmer licensing requirements will adversely impact the expertise of funeral professionals and the level of service provided to families. For the past 40 years, Ohio has required its funeral directors to obtain a bachelor's degree. Ohio also requires an applicant for an embalmer's license to complete a mortuary science program from an accredited mortuary school, pass the National Board Exam, and complete one year internship with an Ohio funeral home.

Ohio's comprehensive licensing standards stand in stark contrast to eight states, including the border state of Kentucky, which requires a funeral director to only hold a high school degree and serve an apprenticeship to obtain a license¹. If HB 203 is enacted in its current form, many persons wishing to obtain an Ohio funeral director's license will choose to do an apprenticeship

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

with a Kentucky funeral home, work in that state for one year, and obtain a reciprocal funeral director's license from Ohio. Not only does this statutory workaround allow a person with no post-secondary education to sidestep college, it provides for a shorter timeframe toward licensure. Many students hoping to work as Ohio funeral directors will pour into Kentucky, serve their apprenticeship and one-year of work, and then obtain full licensure in Ohio. The legislation will lead to a shortage of apprentices for Ohio funeral homes, a substantial drop in admissions at the Cincinnati College of Mortuary Science, and a troubling loss of professionalism and expertise for Ohio families using the services of Ohio funeral homes.

Supporters of including funeral directors and embalmers in HB 203 might inquire why a bachelor's degree is necessary to obtain a funeral director license in Ohio. Beyond the practical need of knowing how to safely and effectively embalm a body, counsel grieving family members, and arrange and carry out complex funeral arrangements in very tight timeframes, funeral directors must also understand and comply with Ohio's funeral laws and regulations, preneed trusting and insurance laws, the FTC Funeral Rule, OSHA's Bloodborne Pathogens, Hazard Communications, and Formaldehyde Exposure Standards, EPA regulations for crematories, Veteran's Administrative regulations, Ohio Vital Statistics regulations, the Ohio right of disposition statute, Ohio Medicaid spenddown regulations, and numerous other laws and regulations. Strict adherence to the complexities of these laws and regulations is an absolute necessity for the protection of Ohio's consumers, funeral home employees, and the public. This cannot be done with only a high school education.

WAGE AND HOUR LAWSUITS

The second overriding concern driving OFDA's opposition to HB 203 is that it will lead to a multitude of lawsuits against Ohio funeral homes due to the possible loss of a valuable exemption from federal Wage and Hour laws now enjoyed by Ohio funeral homes. 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 the 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 regulations which governed 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 Funeral Service Education, generally meet the duties requirements for the learned professional exemption.”
[Emphasis supplied]

Since Ohio is one of the states requiring a bachelor’s degree for funeral licensure, the DOL regulation allows Ohio funeral homes to treat all their licensed employees as professionals, exempt from federal Wage and Hour law. This permits funeral homes to pay salaries, eliminate the administrative burden of tracking employee time, 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 in any particular week.

If HB 203 is enacted in its current version, Ohio will soon be issuing funeral director licenses to out-of-state applicants who have no post-secondary education. OFDA anticipates that some funeral home employees, especially ex-employees, will use HB 203 as grounds for lawsuits against Ohio funeral homes seeking years of back overtime pay. If Ohio issues licenses to high school graduates with no post-secondary education, the rationale for the DOL exemption is lost. This could lead to successful court or administrative law rulings that the DOL regulation no longer applies to Ohio funeral home licensees entitling them to years of back overtime pay. Such a ruling would also cause Ohio’s 2,500 funeral licensees to lose their professional exemption. It would result in widespread disruption of employee compensation and scheduling systems for more than 1,000 funeral home businesses that have relied upon the DOL ruling for the past 17 years.

For the reasons stated above, OFDA and its funeral home and funeral director members oppose HB 203 in its current form and request that funeral directors and embalmers be removed from the bill.