

HCS HB 2388 -- FUNERAL HOMES, FUNERAL CONTRACTS, AND PROFESSIONAL REGISTRATION

SPONSOR: Wasson

COMMITTEE ACTION: Voted "do pass" by the Special Committee on Professional Registration and Licensing by a vote of 14 to 0.

This substitute changes the laws regarding the disposition of cremated human remains, an asset exemption for certain prearranged funeral and burial contracts, endowed care cemeteries, and the regulations of the Department of Insurance, Financial Institutions and Professional Registration.

DISPOSITION OF CREMATED HUMAN REMAINS (Section 194.350, RSMo)

A licensed funeral establishment is allowed to dispose of cremated human remains in accordance with a cremation contract except if otherwise prohibited by law. Currently, a licensed funeral establishment is required to send written notice by certified mail, returned receipt requested, to the licensed funeral establishment or person who contracted for the cremation stating that the remains will be scattered or interred unless the remains are claimed and removed within 90 days.

The substitute removes the certified mail requirement and allows a licensed funeral establishment to send a written notice, with confirmation of delivery, to the last known address of the person or funeral establishment that contracted for the cremation. The provision is also repealed which requires the notification of a scattering or interment of cremated remains to be published in a local newspaper if the mailed written notice cannot be delivered.

ASSET EXEMPTION FOR CERTAIN PREARRANGED FUNERAL AND BURIAL CONTRACTS (Section 208.010)

The substitute specifies that in determining eligibility and the amount of benefits to be granted under federally aided state public assistance programs, the value of any life insurance policy where a seller or provider is made the beneficiary or the policy is assigned to a seller or provider, either being in consideration for an irrevocable prearranged funeral contract under Chapter 436, RSMo, will not be taken into account or considered an asset of the beneficiary named in the irrevocable prearranged funeral contract.

ENDOWED CARE CEMETERIES (Sections 214.277, 214.282, 214.283, 214.320, 214.330, 214.367, 214.387, 214.389, and 214.500 - 214.516)

The substitute:

(1) Repeals the requirement that any court action to grant an injunction, restraining order, or other order to bring suit against cemetery operators upon application by the Division of Professional Registration within the Department of Insurance, Financial Institutions and Professional Registration must be commenced in the county in which the illegal actions occurred or in the county in which the operator resides;

(2) Requires all contracts sold by cemetery operators for cemetery services or for graves, cemetery markers, crypts, and other burial receptacles to meet certain requirements. If these requirements are not met, all payments will be recoverable by the purchaser plus 10% interest and any reasonable collection costs including attorney fees;

(3) Requires any person, entity, or political subdivision that purchases, receives, or holds real estate used for the burial of human remains, excluding a family burial ground, to notify the Office of Endowed Care Cemeteries within the department of the name, location, and address of the real estate before October 1, 2010, or within 30 days of acquiring the land;

(4) Exempts cemetery operators from the provisions of Chapter 436 regarding prearranged funeral contracts for the sale of cemetery services or for graves, cemetery markers, crypts, and other burial receptacles but prohibits them from adjusting or establishing prices for items with the intent of evading the trust or escrow provisions of the chapter. Provisions related to deposits into endowed care trust funds based on the sales price of certain products are revised;

(5) Removes the provisions requiring a financial institution serving as the trustee of an endowed care trust to be located in Missouri but requires all activities of the trust to be controlled by Missouri law and all funds held in trust to remain in Missouri;

(6) Requires a cemetery operator to notify the division in writing at least 30 days prior to selling a majority of the business assets of a cemetery or a majority of its stock;

(7) Allows, for agreements entered into after August 28, 2010, a cemetery prearranged merchandise products contract to be canceled within 30 days of receipt of the executed contract and requires all payments to be fully refunded;

(8) Allows the division to direct a trustee, financial institution, or escrow agent to suspend the distribution of money

from an endowed care trust fund if the cemetery operator is not licensed, has failed to file an annual report, or has failed to file a corrective action plan after an audit has revealed a deficiency; and

(9) Exempts, if a cemetery was owned by a city, any subsequent cemetery owner from liability for any deficiency existing prior to the city's ownership.

LICENSURE OF PRIVATE INVESTIGATORS (Sections 324.1102 - 324.1136)

The substitute:

(1) Requires each member of the Board of Private Investigators Examiners within the division to be a resident of the state for at least one year prior to his or her appointment and to be a registered voter;

(2) Increases, from two to five years, the term of a board member and allows him or her to serve consecutive terms;

(3) Repeals conflicting statutes created by the passage of House Bill 780 and Senate Bill 308 in 2007 regarding the board;

(4) Requires the division to employ board personnel, exercise all administrative functions, and deposit all fees collected into the Board of Private Investigators Examiners Fund;

(5) Removes the exemption for licensure as a private investigator if an employer-employee relationship exists;

(6) Clarifies the exemption for licensure as a private investigator for employees of profit and non-profit agencies making employee background checks;

(7) Clarifies the exemption for licensure as a private investigator if the person is exclusively employed by or under an exclusive contract with a state agency or political subdivision;

(8) Clarifies the exemption for licensure as a private investigator when legal process servers are conducting process-serving activities;

(9) Requires the board, instead of the department, to be responsible for the review of applicants;

(10) Specifies that an applicant can be denied a license if he or she has received a suspended imposition of sentence following a guilty plea to a misdemeanor offense involving moral turpitude or been refused a license or had a license revoked or denied in

the state or any other state;

- (11) Removes a provision regarding the licensure fee for an individual, an agency, or an employee of an agency and for licenses issued for less than a year;
- (12) Specifies the procedures for renewing a license;
- (13) Allows the board to establish all fees;
- (14) Requires a licensee to maintain records containing information relative to his or her employees and copies of contracts or court orders regarding the destruction, sealing, or return of certain records; and
- (15) Allows the board to issue a license to a private investigator trainer.

ARCHITECTS, ENGINEERS, LAND SURVEYORS, AND LANDSCAPE ARCHITECTS
(Sections 327.031, 327.351, and 327.411)

The substitute:

- (1) Increases the membership of the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects from 14 to 15 by adding one more professional engineer;
- (2) Allows a landscape architect to serve as the chairperson of the board;
- (3) Gives all rights, powers, and duties available to the members of the architectural and professional engineering divisions of the board to the members of the professional land surveying and landscape architectural divisions of the board;
- (4) Allows certain faculty members of accredited schools of landscape architecture to serve on the board;
- (5) Establishes a sequential rotation for the appointment of a chairperson to the board;
- (6) Limits a chairperson to one, four-year term;
- (7) Authorizes the President of the Missouri Association of Landscape Architects to fill a board vacancy as other state associations are allowed to do;
- (8) Allows a person holding an inactive license as a professional land surveyor to use that title or the initials

"PLS" after his or her name; and

(9) Requires a licensee to prepare or personally supervise the preparation of all documents containing his or her personal seal and to only seal documents in areas in which he or she is qualified by education, training, and experience in the specific technical areas involved.

EXPANDED-FUNCTIONS PERMITS FOR CERTAIN DENTAL ASSISTANTS AND DENTAL HYGIENISTS (Sections 332.011 and 332.098)

All dental assistants and dental hygienists must obtain a permit from the Missouri Dental Board within the department in order to perform expanded-functions duties. "Expanded-functions duties" are defined as reversible acts that would be considered the practice of dentistry that the board specifies by rule may be delegated to a dental assistant or dental hygienist who possesses an expanded-functions permit.

Nothing in the substitute will be construed as making it unlawful for a licensed dentist to perform any dental services that would be considered expanded-functions duties or for dental assistants, certified dental assistants, or expanded-functions dental assistants to polish teeth. The board is prohibited from establishing any rule allowing the delegation of acts to a dental assistant which would conflict with the practice of dental hygiene. Expanded-functions permits must be renewed every five years, and the board is authorized to establish rules regarding the issuance and renewal of the permits.

ADVANCED PRACTICE REGISTERED NURSES (Sections 334.506 and 334.613)

An advanced practice registered nurse is added to the list of approved health care providers who are authorized to write a prescription to refer a patient to a physical therapist.

SUPERVISION REQUIREMENTS FOR PHYSICIAN ASSISTANTS (Section 334.735)

The State Board of Registration for the Healing Arts within the department is prohibited from requiring additional supervision requirements for a physician and physician assistant team prior to granting a supervision waiver to work in a rural health clinic as defined by the federal Rural Health Clinic Services Act if the minimum federal standards are met.

A physician assistant must be in a collaborative agreement with a supervising physician prior to prescribing or dispensing any drug, medicine, therapy, or device allowed by current law.

LICENSURE OF NURSES (Section 335.081 and Section 1)

The substitute exempts a person from licensure as a nurse in Missouri if he or she holds an out-of-state license and is transporting a patient into, out of, or through the state and the transport does not exceed 48 hours.

An employer of nurses is required to have a system in place for verifying that the applicant for a position as a registered, licensed practical, or advanced practice registered nurse has a current valid license and to verify the licensure status at the time of the nurse's license renewal.

COMPLAINTS AGAINST CERTAIN LICENSED PROFESSIONALS (Section 337.528)

The State Committee for Professional Counselors within the department is allowed to remove unsubstantiated complaints made against licensed professional counselors by offenders who are in the custody of the Department of Corrections or who have been ordered into custody, detained, or held by the Department of Mental Health as sexually violent predators. Upon the written request of a licensed professional counselor subject to a complaint prior to August 28, 2010, by these offenders that did not result in disciplinary action, the committee and the Division of Professional Registration within the Department of Insurance, Financial Institutions and Professional Registration must destroy all documentation regarding the complaint, notify any other licensing board that was previously notified of the complaint of its actions, and send a letter to the licensee clearly stating that the complaint was unsubstantiated.

LICENSURE OF SOCIAL WORKERS (Sections 337.600, 337.615, 337.618, and 337.643)

The substitute:

(1) Revises the definition of "master social work" to limit the supervision required of those in the practice of master social work to no more than 48 consecutive months for licensing purposes;

(2) Repeals the provisional license for clinical social workers; and

(3) Revises the definition of "qualified advanced macro supervisor," "qualified baccalaureate supervisor," and "qualified clinical supervisor" to be a licensed social worker who has supervised in the field of social work for at least five years. Currently, supervision is required for at least five

uninterrupted years.

MARITAL AND FAMILY THERAPISTS (Sections 337.700, 337.703, 337.705, 337.706, 337.715, and 337.718)

The State Committee for Marital and Family Therapists within the department is authorized to issue a provisional license to a person who is a graduate of a specified acceptable higher education institution with at least a master's degree in marital and family therapy, or its equivalent, and meets all requirements of a licensed marital and family therapist other than the specified required supervised clinical experience if he or she is supervised by a qualified person as defined by rule of the Division of Professional Registration.

Any official, employee, board, commission, or agency of the state and any county, municipality, school district, or other political subdivision of the state is prohibited from discriminating between persons licensed as marital and family therapists when establishing rules or when requiring or recommending services that legally may be performed by these therapists.

LICENSURE OF WHOLESALE DRUG DISTRIBUTORS (Sections 338.333 and 338.335)

Certain wholesale drug distributors who distribute drug-related devices in this state are exempted from obtaining a license for out-of-state distribution sites from the State Board of Pharmacy within the department if a licensed Missouri wholesale drug distributor is responsible for all shipments received from the out-of-state distribution sites.

REAL ESTATE BROKERS (Sections 339.010 and 339.845)

The substitute changes the laws regarding the regulation of real estate brokers and salespersons to include limited partnerships, limited liability companies, and professional corporations and specifies that "real estate broker" will include these types of companies and "real estate salesperson" will include any person, partnership, limited partnership, limited liability company, association, professional corporation, or domestic or foreign corporation who has a valid real estate broker license and receives compensation from a real estate broker. A real estate broker-salesperson may not also operate as a real estate broker.

The Missouri Real Estate Commission within the department is required upon receiving notice from the Department of Revenue that a licensee is delinquent in paying his or her taxes to immediately send a copy of the notice to the broker with which the licensee is associated.

RESIDENTIAL CARE FACILITIES (Section 344.020)

The Missouri Board of Nursing Home Administrators within the Department of Insurance, Financial Institutions and Professional Registration is authorized to issue a separate license to the administrator of a residential care facility which was licensed as a residential care facility II on or before August 27, 2006, if it continues to meet all licensure standards for a residential care facility II in effect as of that date.

Anyone licensed to operate a residential care facility will not be considered authorized to operate any intermediate care or skilled nursing facility.

DISCIPLINARY ACTIONS AGAINST CERTAIN HEALTH CARE PROFESSIONALS (Sections 383.130 and 383.133)

Home health agencies, nursing homes or facilities, or certain entities employing or contracting with licensed health care professionals are added to the list of health care providers that must report to the appropriate health care professional licensing authority any disciplinary action against any health care professional or the voluntary resignation of any professional against whom any complaints or reports have been made which might have led to disciplinary action.

FISCAL NOTE: No impact on General Revenue Fund in FY 2011, FY 2012, and FY 2013. Estimated Income on Other State Funds of \$0 in FY 2011, \$50,460 in FY 2012, and \$1,851 in FY 2013.

PROPONENTS: Supporters say that operators of residential care facilities currently must have a nursing home administrators license. The bill allows for a separate license to only operate a residential care facility.

Testifying for the bill were Representative Wasson; Missouri Assisted Living Association; and Missouri Association of Homes for the Aging.

OPPONENTS: There was no opposition voiced to the committee.