

No. 1983-88

AN ACT

SB 967

Amending the act of January 14, 1952 (1951 P.L.1898, No.522), entitled, as amended, "An act to provide for the better protection of life and health of the citizens of this Commonwealth by requiring and regulating the examination, licensure and registration of persons and registration of corporations engaging in the care, preparation and disposition of the bodies of deceased persons, and providing penalties; providing for a State Board of Funeral Directors in the Department of State, and repealing other laws," reestablishing the State Board of Funeral Directors; providing for the establishment of fees; requiring reports to legislative committees; providing for civil penalties and revocations; specifying fee establishment procedures; requiring annual financial estimates; and making repeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 3(c), (g) and (h) and 4 of the act of January 14, 1952 (1951 P.L.1898, No.522), known as the Funeral Director Law, amended July 31, 1968 (P.L.1008, No.295), are amended to read:

Section 3. Application for License; Qualifications of Applicants.—***

(c) (1) In addition thereto, each applicant shall have successfully completed a course of actual class work in didactic and laboratory studies in a school of embalming for a period to be fixed by the board at not less than nine hundred (900) hours nor more than twenty-four hundred (2400) hours, and shall have completed two years as a resident trainee.

[Each applicant applying during the period from the first day of September, one thousand nine hundred fifty-three, to the thirty-first day of August, one thousand nine hundred fifty-five, shall have successfully completed one year of academic work at a college or university accredited by the Department of Public Instruction, and a course of actual class work in didactic and laboratory studies in a school of embalming for a period to be fixed by the board at not less than nine hundred (900) hours nor more than twenty-four hundred (2400) hours, and shall have completed one year as a resident trainee.]

(2) Each applicant [applying after the thirty-first day of August, one thousand nine hundred fifty-five,] shall have successfully completed two years of academic work at a college or university accredited by the Department of [Public Instruction] Education, and a one year course at a mortuary college or university accredited by the American Board of Funeral Service Education, Inc. and shall have completed one year as a resident interne.

(3) No more than an average of one hundred (100) hours of embalming or mortuary school training shall be given or required in any calendar month of any one year.

[(g) Any person applying for examination and licensure before the first day of January, one thousand nine hundred fifty-three, may offer, in lieu of the foregoing educational requirements, fifteen or more years' experience as an apprentice to a licensed funeral director; and such person, until he shall have taken and passed the examination, shall be considered a resident interne.]

(h) Any person, having the qualifications prescribed by subsection (b) of this section, registered as a student trainee under the provisions of existing law or enrolled as a student in a school of embalming prior to the first day of January, one thousand nine hundred fifty-three, and who has continuously thereafter served as a student trainee or continued his studies in a school of embalming, or either, shall be entitled to take the examination for license to practice as a funeral director after he has had practical experience in the business or profession of funeral directing for two years continuously as a resident interne and has completely embalmed at least twenty-five (25) bodies.]

Section 4. Registration of Student Trainees.—(a) Every applicant, upon entering the school of embalming, shall register with the board annually, in such manner as may be provided by the board, and shall pay such registration fee as shall be fixed by [the department] *regulation*. The [secretary of the] board shall keep a separate register of applicants in training, containing their names, ages, residences, where they attended school, the licensed funeral directors with whom they are associated or the embalming school they are attending, and such other information as the board may direct and as provided for by this act.

(b) Any applicant, registered as a student of any licensed funeral director or embalming school, who changes his preceptor or school, shall immediately re-register and pay such additional fee as may be fixed by the department. Every funeral director with whom a resident interne is registered shall immediately notify the board of the termination of such relation.

(c) The preceptor to the resident interne must comply with the qualifications and duties as set forth by the rules and regulations of the board, which is given the authority to set standards and limit the number of student trainees with each preceptor.

Section 2. Section 11 of the act, amended July 31, 1968 (P.L.1008, No.295) and March 3, 1976 (P.L.32, No.16), is amended to read:

Section 11. Refusal; Suspension; Revocation.—(a) The board, by a majority vote thereof, may refuse to grant, refuse to renew, suspend or revoke a license of any applicant or licensee, whether originally granted under this act or under any prior act, for the following reasons:

(1) The practice of any fraud or deceit in obtaining or attempting to obtain a license.

(2) Violation of the health laws of this Commonwealth.

(3) The conviction of a crime involving moral turpitude, *in this or any other State or Federal court or pleading guilty or nolo contendere to any such offense.*

(4) The use of misleading advertising.

(5) Gross incompetency, negligence or misconduct in the carrying on of the profession.

(6) Violation of or non-compliance with the provisions of this act or the rules and regulations of the board.

(7) Loaning, borrowing or using a license of another, or of knowingly aiding or abetting in any way the granting of improper licenses.

(8) Soliciting patronage other than by legitimate advertisement, or paying a commission or agreeing to pay a commission to any person or persons for soliciting or for business secured, or paying any gratuity to any person with intent to have such person aid in securing business, or other similar unprofessional conduct.

(9) Gross immorality.

(10) Conviction of the violation of any statute, rule or regulation of any state concerning the conduct of the profession beyond the boundaries of this Commonwealth.

(11) Solicitation or acceptance by a licensee of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any particular crematory, mausoleum or cemetery.

(12) Failure by a corporation to comply with the provisions of section 8(b) or (c).

(b) Unless ordered to do so by a court, the board shall not reinstate the license of any person whose license has been revoked under this act. Any person whose license has been revoked may reapply for a license at the end of a five-year period but must meet all of the licensing qualifications of this act for the license applied for, to include the examination requirement.

Section 3. Section 16 of the act is amended by adding a subsection to read:

Section 16. Duties of Board.—* * *

(d) The board shall submit annually to the department and to the House and Senate Appropriations Committees, fifteen days after the Governor has submitted his budget to the General Assembly, a copy of the budget request for the upcoming fiscal year which the board previously submitted to the department.

Section 4. Section 17 of the act, amended March 3, 1976 (P.L.32, No.16), is amended to read:

Section 17. Penalties.—(a) Any person violating any of the provisions of this act or any rule or regulation of the board promulgated pursuant thereto shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1000), or undergo imprisonment not exceeding one (1) year, or both.

(b) In addition to any other civil remedy or criminal penalty provided for in this act, the board, by a vote of the majority of the maximum number of the authorized membership of the board as provided by law, or by a vote of the majority of the duly qualified and confirmed membership of a minimum of four members, whichever is greater, may levy a civil penalty of up to one thousand dollars (\$1,000) on any current licensee who violates any provision

of this act or on any person who practices as a funeral director without being properly licensed to do so under this act. The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

Section 5. Section 18 of the act is amended to read:

Section 18. Disposition of Fees.—All fees, fines and penalties specified and imposed under this act or any rule or regulation of the board promulgated pursuant thereto shall be paid into [the State Treasury through the Department of Revenue] *the Professional Licensure Augmentation Account.*

Section 6. The act is amended by adding a section to read:

Section 18.1. Fees Imposed.—(a) All fees required under the provisions of this act shall be fixed by the board by regulation and shall be subject to review in accordance with the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act." If the revenues generated by fees, fines and civil penalties imposed in accordance with the provisions of this act are not sufficient to match expenditures over a two-year period, the board shall increase those fees by regulation, subject to review in accordance with the "Regulatory Review Act," such that projected revenues will meet or exceed projected expenditures.

(b) If the Bureau of Professional and Occupational Affairs determines that the fees established by the board are inadequate to meet the minimum enforcement efforts required, then the bureau, after consultation with the board, shall increase the fees by regulation, subject to review in accordance with the "Regulatory Review Act," such that adequate revenues are raised to meet the required enforcement effort.

(c) All fines and civil penalties imposed in accordance with this act shall be paid into the Professional Licensure Augmentation Account.

Section 7. Section 19 of the act, amended July 31, 1968 (P.L.1008, No.295), is amended to read:

Section 19. State Board of Funeral Directors.—*(a) There shall be a State Board of Funeral Directors as a departmental administrative board in the Department of State. [The State Board of Funeral Directors shall consist of five persons, who shall be licensed funeral directors of good moral character and who shall also have been actively engaged in the practice of funeral directing for at least ten years immediately preceding their appointment. The Commissioner of Professional and Occupational Affairs shall be an ex officio member of the said board, acting on behalf of the Secretary of State. One member shall be appointed each year for a term of five years, expiring on the thirty-first day of August or until his successor is appointed and qualified. Vacancies shall be filled for the unexpired portion of the term only. The present members of the State Board of Undertakers shall continue as members of the State Board of Funeral Directors until the expiration of their respective terms.*

Three members of the board shall constitute a quorum. The board shall select from among their number a chairman and shall elect a secretary who need not be a member of the board. Each member of the board, other than

the Commissioner of Professional and Occupational Affairs, shall receive thirty dollars per diem when actually engaged in the transaction of official business and said members shall also receive the amount of actual traveling, hotel and other necessary expenses incurred in the performance of their duties under this act.] *The board shall consist of the Commissioner of Professional and Occupational Affairs, the Director of the Bureau of Consumer Protection in the Office of Attorney General, or his designee, two members appointed by the Governor, who shall be persons representing the public at large, and five members appointed by the Governor who shall be licensed funeral directors of good moral character and who shall also have been actively engaged in the practice of funeral directing for at least ten years immediately preceding their appointment.*

(b) Professional and public members shall be appointed by the Governor with the advice and consent of the Senate for terms of five years. A member may continue to serve for a period not to exceed six months beyond the expiration of his term, if a successor has yet to be duly appointed and qualified according to law. If a member dies or resigns during his term of office, a successor shall be appointed as provided in this section and shall serve for the remainder of his predecessor's unexpired term.

(c) Five members of the board shall constitute a quorum.

(d) The board shall select a chairman from among its members and may elect a secretary from among its members.

(e) The members of the board, other than the Commissioner of Professional and Occupational Affairs and the Director of the Bureau of Consumer Protection in the Office of Attorney General, or his designee, shall receive sixty dollars (\$60) per diem when actually engaged in the transaction of official business and shall also receive the amount of reasonable traveling, hotel and other necessary expenses incurred in the performance of their duties.

(f) The board is subject to evaluation, review and termination within the time and in the manner provided in the act of December 22, 1981 (P.L.508, No.142), known as the "Sunset Act."

(g) A member of the board who fails to attend three consecutive meetings shall forfeit his seat unless the Commissioner of Professional and Occupational Affairs, upon written request from the member, finds that the member should be excused from a meeting because of illness or the death of an immediate family member.

Section 8. The act is amended by adding a section to read:

Section 19.1. Report to Committees.—The board shall submit annually a report to the Professional Licensure Committee of the House of Representatives and to the Consumer Protection and Professional Licensure Committee of the Senate a description of the types of complaints received, status of cases, board action which has been taken and the length of time from the initial complaint to final board resolution.

Section 9. Sections 419 and 2112 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, are repealed.

Section 10. This act reestablishes the State Board of Funeral Directors in accordance with the procedures set forth in section 7(a) of the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

Section 11. The presently confirmed members of the existing State Board of Funeral Directors, as of December 31, 1983, shall continue to serve as board members until their present terms of office expire.

Section 12. Each rule and regulation of the board in effect on December 31, 1983, shall remain in effect after such date until repealed or amended by the board.

Section 13. This act shall be retroactive to December 31, 1983, if enacted finally after that date.

Section 14. This act shall take effect immediately.

APPROVED—The 22nd day of December, A. D. 1983.

DICK THORNBURGH