

House Bill 2609

Sponsored by Representative KRUMMEL; Representative BUTLER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies procedures that State Mortuary and Cemetery Board must follow when investigating complaints and imposing sanctions. Requires board to make proceedings related to complaints and all materials related to investigations public upon making finding of cause to impose sanction or upon dismissing complaint or board's motion to investigate. Establishes time limits for conducting investigation and commencing contested case proceeding.

A BILL FOR AN ACT

1
2 Relating to authority of State Mortuary and Cemetery Board; creating new provisions; and amending
3 ORS 676.160, 676.400, 690.025, 692.180, 692.230 and 692.265.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 692.180 is amended to read:

6 692.180. (1) Upon complaint or upon its own motion, the State Mortuary and Cemetery Board
7 may investigate any complaint concerning any person, licensee or holder of a certificate of authority
8 made by any person or by the board. If the board finds any of the causes described in this section
9 in regard to any person, licensee or applicant or the holder of a certificate of authority, the board
10 may impose a civil penalty of not more than \$1,000 for each violation, suspend or revoke a license
11 to practice or to operate under this chapter or refuse to grant or renew a license. The causes are
12 as follows:

13 (a) Misrepresentation in the conduct of business or in obtaining a license.

14 (b) Fraudulent or dishonest conduct, when the conduct bears a demonstrable relationship to fu-
15 neral service practice, embalming practice or the operation of cemeteries or crematoriums.

16 (c) Except as provided in this paragraph, solicitation of human dead bodies by the licensee or
17 any agent, assistant or employee of the licensee, either before or after death. This paragraph does
18 not apply to:

19 (A) Activities permissible under ORS 97.923 to 97.949; or

20 (B) The sale, in accordance with provisions of the Insurance Code, of prearranged funeral or
21 cemetery merchandise or services, or any combination thereof, to be funded by the contemporaneous
22 or subsequent assignment of a life insurance policy or an annuity contract.

23 (d) Offensive treatment of dead human bodies or a body in the person's custody has been dis-
24 posed of in violation of ORS chapter 432 or rules adopted pursuant thereto.

25 (e) Aiding or abetting a person who is not a licensee or an apprentice in any act involving the
26 disposition of dead human bodies before the bodies undergo cremation, entombment or burial or
27 before the bodies are transported out of the State of Oregon.

28 (f) Sale or reuse of any casket or body container that has been previously utilized for the
29 placement of a deceased human body. This does not include use of a rental cover as defined in ORS
30 692.010.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 (g) Violation of any of the provisions of this chapter or any rules adopted under this chapter.

2 (h) Violation of any provision of ORS 97.929 or 97.937 or regulations adopted by the Federal
3 Trade Commission regulating funeral industry practices.

4 (i) Conviction of a crime, when the crime bears a demonstrable relationship to funeral service
5 practice, embalming practice or the operation of cemeteries or crematoriums. A copy of the record
6 of the conviction certified to by the clerk of the court entering the conviction shall be conclusive
7 evidence of the conviction.

8 (j) Violation of ORS chapter 97 as it relates to disposition of human bodies and to cemeteries.

9 (k) Refusing to surrender promptly the custody of a dead human body, upon the express order
10 of the person lawfully entitled to the custody of the body.

11 (L) Acting as the legal representative of any deceased person for whom the licensee has ren-
12 dered services governed by this chapter. This subsection does not prohibit a licensee from acting
13 as the legal representative of a deceased relative or a deceased licensee if the deceased licensee
14 was a partner, employee or employer in the licensee's practice.

15 (m) Failure to pay any civil penalty imposed by the board within 10 days after the order is en-
16 tered or, if appealed, within 10 days after the order is sustained on appeal.

17 (2) All amounts recovered under this section shall be deposited in accordance with ORS 692.375.

18 (3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

19 (4) Upon receipt of a complaint, the board shall conduct an investigation as described under
20 **[ORS 676.165] section 4 of this 2007 Act.**

21 (5) Information that the board obtains as part of an investigation into **the conduct of any**
22 **person**, licensee [*or*], applicant [*conduct*] **or holder of a certificate of authority** or as part of a
23 contested case proceeding, consent order or stipulated agreement involving **the conduct of any**
24 **person**, licensee [*or*], applicant [*conduct is confidential as provided under ORS 676.175*] **or holder**
25 **of a certificate of authority shall be available to the public after the board dismisses the**
26 **complaint, acts to impose a civil penalty or acts to revoke, suspend or refuse to issue or**
27 **renew a license or certificate of authority.**

28 **SECTION 2.** ORS 692.230 is amended to read:

29 692.230. (1) The State Mortuary and Cemetery Board may suspend or revoke a certificate of
30 apprenticeship, after notice and upon hearing, if the board finds any of the causes specified in ORS
31 692.180 in regard to the apprentice.

32 (2) An apprentice who has had a certificate of apprenticeship suspended or revoked may apply
33 for reregistration within one year after the suspension or revocation, but the board shall not allow
34 more than two reregistrations. When the circumstances warrant, the board may allow an apprentice
35 credit under a reregistration for time actually served under a previous registration. However, if the
36 previous registration has been suspended or revoked under subsection (1) of this section, the board
37 shall not credit on the registration more than 75 percent of the time previously served.

38 (3) Upon receipt of a complaint, the board shall conduct an investigation as described under
39 **[ORS 676.165] section 4 of this 2007 Act.**

40 (4) Information that the board obtains as part of an investigation into [*licensee*] **the conduct**
41 **of a holder of a certificate of apprenticeship** or [*applicant conduct*] **an applicant for a certificate**
42 or as part of a contested case proceeding, consent order or stipulated agreement involving [*licensee*
43 or *applicant conduct is confidential as provided under ORS 676.175*] **the conduct of a holder of a**
44 **certificate of apprenticeship or an applicant for a certificate shall be available to the public**
45 **after the board dismisses the complaint, acts to impose a civil penalty or acts to revoke,**

1 suspend or refuse to issue or renew a certificate of apprenticeship.

2 **SECTION 3.** Sections 4 and 5 of this 2007 Act are added to and made a part of ORS
3 chapter 692.

4 **SECTION 4.** (1) A person who is the subject of a complaint or of an action taken by the
5 State Mortuary and Cemetery Board on its own motion shall be notified immediately upon
6 receipt of the complaint or upon adoption of a motion by the board to undertake any action
7 concerning the person under ORS 692.180 or 692.230. The notice shall be given by telephone
8 if the person can be reached and shall also be in writing mailed to the person. The notice
9 shall include the nature of the complaint or motion and a copy of all materials submitted
10 along with the complaint or materials that give rise to the board's instigation of action on
11 its own motion. The person must be notified in advance if the board plans to discuss at a
12 board meeting an issue that may give rise to a motion by the board to undertake any action
13 on its own motion concerning the person under ORS 692.180 or 692.230.

14 (2) Before investigating any complaint or undertaking an investigation on the board's
15 own motion, the board shall notify the person who is the subject of the investigation and
16 identify the issues to be examined. The board shall confine the investigation to those issues.
17 If the board finds reason to expand the investigation, the board shall move to do so and shall
18 record in its minutes the issues to be examined before expanding the scope of the investi-
19 gation. The board shall formally notify the complainant and the person who is the subject
20 of the complaint of the expansion and the scope of the investigation.

21 (3) If the board does not make a finding of cause, the board shall dismiss the complaint
22 or rescind its motion and shall formally enter the dismissal or rescission on its records. The
23 board shall notify the person who is the subject of the complaint or motion of the dismissal
24 or rescission. After dismissing the complaint or rescinding its motion, the board shall take
25 no further action involving the person unless a new and different complaint is filed or action
26 on the board's own motion is undertaken based on different conduct.

27 (4) During an investigation, the board may:

28 (a) Seek, solicit or otherwise obtain any books, papers, records, memoranda or other in-
29 formation, administer oaths and take depositions necessary to determine whether there is
30 cause; and

31 (b) Require any additional information, administer oaths, take depositions and issue
32 subpoenas to compel attendance of witnesses and the production of books, papers, records,
33 memoranda or other information necessary to complete the investigation. If any person fails
34 to comply with any subpoena issued under this section or refuses to testify on any matters
35 on which the person may be lawfully interrogated, the procedure provided in ORS 183.440
36 shall be followed to compel compliance.

37 (5)(a) Upon receipt of a complaint, the board shall assign one or more persons to act as
38 investigator of the complaint.

39 (b) The person conducting an investigation shall do so in an impartial, objective manner.
40 All favorable and unfavorable information collected by the person conducting the investi-
41 gation shall be turned over to the board.

42 (6) The findings of the board in any inquiry or investigation shall be reported impartially,
43 including both favorable and unfavorable findings, and shall be made available to the person
44 who is the subject of the inquiry or investigation.

45 (7) If the board makes a finding of cause and proposes to impose a civil penalty or to

1 revoke, suspend or refuse to issue any license or certificate, the board shall provide the
 2 person subject to the proposed board action an opportunity for a hearing. The procedure for
 3 the hearing shall be that provided for a contested case under ORS chapter 183.

4 (8)(a) The period of time from the filing of a complaint or from acting on the board's own
 5 motion to the finding of cause or dismissal of the complaint or rescission of the motion shall
 6 not exceed 60 days unless a delay is stipulated to by both the person who is the subject of
 7 the investigation and the board with the board reserving a portion of the delay period to
 8 complete its actions.

9 (b) The time limit imposed in this subsection and the board's inquiry are suspended if:

10 (A) There is a pending criminal investigation that relates to the issues arising out of the
 11 underlying facts or conduct at issue in the matter before the board unless the parties stip-
 12 ulate otherwise; or

13 (B) A court has enjoined the board from continuing its investigation.

14 (9) An investigation shall be confidential. Board members and staff may acknowledge
 15 receipt of a complaint but may not publicly comment or publicly disclose any materials re-
 16 lating to a case during the investigation. A person who intentionally violates this subsection
 17 is subject to a civil penalty in an amount not to exceed \$1,000. Any person aggrieved as a
 18 result of a violation of this subsection by a member of the board or its staff may file a pe-
 19 tition in a court of competent jurisdiction in the county in which the petitioner resides in
 20 order to enforce the civil penalty provided in this subsection.

21 (10) The board's deliberations of a case at the conclusion of an investigation shall be
 22 conducted in executive session. All case related materials and proceedings shall be available
 23 to the public after the board makes a finding of cause, dismisses a complaint or rescinds a
 24 motion. Prior to the conclusion of an investigation, the board shall prepare a statement of
 25 the facts determined during the investigation, including appropriate legal citations and rele-
 26 vant authorities.

27 (11)(a) The period of time from the finding of cause to the beginning of any contested
 28 case proceedings shall not exceed 120 days unless a delay is stipulated to by both the person
 29 who is the subject of the board's action and the board with the board reserving a portion of
 30 the delay period to complete its actions.

31 (b) The time limit imposed in this subsection and the board's investigation are suspended
 32 if:

33 (A) There is a pending criminal investigation that relates to the issues arising out of the
 34 underlying facts or conduct at issue in the matter before the board unless the parties stip-
 35 ulate otherwise; or

36 (B) A court has enjoined the board from continuing its investigation.

37 (12) At the conclusion of the investigation, the board shall take action by order, which
 38 action may include:

39 (a) Dismissal or rescission, with or without comment;

40 (b) Continuation of the investigation to determine further facts, but no more than one
 41 continuation may be taken and the continuation may not exceed 30 days' duration;

42 (c) Imposing a civil penalty or taking disciplinary action as provided in ORS 692.180;

43 (d) Moving to a contested case proceeding;

44 (e) Seeking a negotiated settlement; or

45 (f) Taking other appropriate action if justified by the findings.

1 (13) The board may not inquire into or investigate any complaint, or act on its own mo-
 2 tion, on alleged conduct that occurred more than four years before the complaint is filed or
 3 action is undertaken.

4 (14) Nothing in this section is intended to prevent the board and the person alleged to
 5 have violated a provision of this chapter from stipulating to a finding of fact concerning the
 6 violation and consenting to an appropriate penalty. The board shall enter an order accord-
 7 ingly.

8 (15) As used in this section:

9 (a) "Cause" means that there is a substantial, objective basis for believing that a vio-
 10 lation of a provision of this chapter may have been committed and the person who is the
 11 subject of an investigation may have committed the violation.

12 (b) "Pending" means that a prosecuting attorney is either actively investigating the fac-
 13 tual basis of the alleged criminal conduct, is preparing to seek or is seeking an accusatory
 14 instrument, has obtained an accusatory instrument and is proceeding to trial or is in trial
 15 or in the process of negotiating a plea.

16 **SECTION 5.** A person who reports or supplies information in good faith to the State
 17 Mortuary and Cemetery Board shall be immune from an action for civil damages as a result
 18 thereof.

19 **SECTION 6.** ORS 676.160 is amended to read:

20 676.160. As used in ORS 676.165 to 676.180, "health professional regulatory board" means the:

- 21 (1) State Board of Examiners for Speech-Language Pathology and Audiology;
- 22 (2) State Board of Chiropractic Examiners;
- 23 (3) State Board of Clinical Social Workers;
- 24 (4) Oregon Board of Licensed Professional Counselors and Therapists;
- 25 (5) Oregon Board of Dentistry;
- 26 (6) Board of Examiners of Licensed Dietitians;
- 27 (7) State Board of Massage Therapists;
- 28 [(8) *State Mortuary and Cemetery Board*];
- 29 [(9)] (8) Board of Naturopathic Examiners;
- 30 [(10)] (9) Oregon State Board of Nursing;
- 31 [(11)] (10) Board of Examiners of Nursing Home Administrators;
- 32 [(12)] (11) Oregon Board of Optometry;
- 33 [(13)] (12) State Board of Pharmacy;
- 34 [(14)] (13) Board of Medical Examiners;
- 35 [(15)] (14) Occupational Therapy Licensing Board;
- 36 [(16)] (15) Physical Therapist Licensing Board;
- 37 [(17)] (16) State Board of Psychologist Examiners;
- 38 [(18)] (17) Board of Radiologic Technology;
- 39 [(19)] (18) Oregon State Veterinary Medical Examining Board; and
- 40 [(20)] (19) Department of Human Services to the extent that the department certifies emergency
 41 medical technicians.

42 **SECTION 7.** ORS 676.400 is amended to read:

43 676.400. (1) It is the intention of the Legislative Assembly to achieve the goal of universal access
 44 to adequate levels of high quality health care at an affordable cost for all Oregonians, regardless
 45 of ethnic or cultural background.

1 (2) The Legislative Assembly finds that:

2 (a) Access to health care is of value when it leads to treatment that substantially improves
3 health outcomes;

4 (b) Health care is most effective when it accounts for the contribution of culture to health status
5 and health outcomes;

6 (c) Ethnic and racial minorities experience more than their statistically fair share of undesirable
7 health outcomes;

8 (d) The lack of licensed health care professionals from ethnic and racial minorities or who are
9 bilingual contributes to the inadequacy of health outcomes in communities of color in this state; and

10 (e) The development of a partnership between health professional regulatory boards and com-
11 munities of color to increase the representation of people of color and bilingual people in health
12 care professions has significant potential to improve the health outcomes of people of color and bi-
13 lingual citizens of this state.

14 (3) Health professional regulatory boards shall establish programs to increase the representation
15 of people of color and bilingual people on the boards and in the professions that they regulate. Such
16 programs must include activities to promote the education, recruitment and professional practice
17 of members of these targeted populations in Oregon.

18 (4) Each health professional regulatory board shall maintain records of the racial and ethnic
19 makeup of applicants and professionals regulated by the board. Such information shall be requested
20 from applicants and the professionals regulated who shall be informed in writing that the provision
21 of such information is voluntary and not required.

22 (5) Each health professional regulatory board shall report biennially to the Legislative Assembly
23 in the manner required by ORS 192.245. The report shall contain:

24 (a) Data detailing the efforts of the board to comply with the requirements of subsection (3) of
25 this section; and

26 (b) Data collected under subsection (4) of this section documenting the ethnic and racial makeup
27 of the applicants and of the professionals regulated by the board.

28 (6) For purposes of this section, "health professional regulatory board" has the meaning given
29 that term in ORS 676.160 **and also means the State Mortuary and Cemetery Board.**

30 **SECTION 8.** ORS 690.025 is amended to read:

31 690.025. ORS 690.005 to 690.235 do not apply to:

32 (1) Persons who perform service without compensation in case of emergency or in domestic ad-
33 ministration.

34 (2) Persons licensed by a health professional regulatory board listed in ORS 676.160 **and per-**
35 **sons licensed or certificated by the State Mortuary and Cemetery Board** who are acting within
36 the scope of their professional license.

37 (3) Persons identified by the agency or Board of Cosmetology by rule who are acting under the
38 authority of a hospital or long term care facility licensed under ORS 441.025 or a residential facility
39 licensed under ORS 443.415.

40 (4) Persons engaged in rendering emergency medical assistance as defined in ORS 30.800.

41 (5) Persons licensed by the State Board of Pharmacy, merchants or other individuals when
42 demonstrating apparatus or supplies for purposes of sale.

43 (6) Commissioned medical and surgical officers and personnel of the United States Armed Ser-
44 vices while operating on a military base and personnel of correctional institutions while operating
45 on the premises of a correctional facility.

1 (7) Persons applying temporary makeup, combing hair or applying hair spray, without compen-
2 sation specifically for the application or combing, for the sole purpose of preparing any individual
3 for a professional photograph or theatrical performance.

4 (8) A student while engaged in training at the direction of and under the direct supervision of
5 the faculty of a school licensed under ORS 345.010 to 345.450 to teach a field of practice.

6 **SECTION 9.** ORS 692.265 is amended to read:

7 692.265. *[(1) If the State Mortuary and Cemetery Board proposes to impose a civil penalty or to*
8 *revoke, suspend or refuse to issue or renew any license or certificate, the board shall accord an op-*
9 *portunity for hearing as provided in ORS chapter 183.]*

10 [(2)] Adoption of rules, conduct of hearings and issuance of orders and judicial review of rules
11 and orders **by the State Mortuary and Cemetery Board** shall be as provided in ORS chapter 183.

12