

State of Kansas
Kansas State Board of Mortuary Arts (KSBMA)
Notice of Public Hearing on Proposed Administrative Regulation

A public hearing will be conducted on Thursday, December 27, 2018 at 10:00 a.m. at the Kansas State Board of Mortuary Arts, 700 SW Jackson St., Suite 904, Topeka, KS 66603 to consider the adoption of a proposed regulation of the Kansas State Board of Mortuary Arts, on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for receiving written public comments on the proposed regulation. All interested parties may submit written comments prior to the hearing to the Kansas State Board of Mortuary Arts, 700 SW Jackson St., Suite 904, Topeka, KS 66603 or by email to mack.smith@ks.gov. All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulations during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request each participant to limit any oral presentation to five minutes.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Mack Smith at (785) 296-3980.

A summary of the proposed regulation and economic impact follow. Copies of the proposed regulation and the Economic Impact Statement can be viewed at the following website: <http://ksbma.ks.gov/>

K.A.R. 63-5-3 - Potentially disqualifying civil and criminal records; advisory opinion; fee. This new regulation identifies and defines any potentially disqualifying civil and criminal records that may disqualify an applicant from receiving a license in the professions regulated by the Kansas State Board of Mortuary Arts. The regulation provides for an advisory opinion prior to application for licensure for an amount of \$50 to state if there is a disqualifying civil or criminal record that would disqualify such applicant from licensure.

Economic Impact. The Board anticipates that there should be little, if any, economic impact to State and local governments due to this regulation.

Mack Smith
Executive Secretary

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63-5-3. Potentially disqualifying civil and criminal records; advisory opinion; fee. (a) For purposes of this regulation, "conviction" shall mean a judgment or order of guilt by a court of competent jurisdiction in any state, or a subdivision thereof, or territory of the United States, by a court of the United States, or by a military court martial pursuant to the uniform code of military justice.

(b) The following criminal records may disqualify an applicant from receiving a license:

(1) A conviction of any offense classified as a felony in the jurisdiction in which the conviction occurred;

(2) a conviction of criminal desecration as defined in K.S.A. 2018 Supp. 21-6205, and amendments thereto, or a crime defined as substantially similar in the jurisdiction in which the conviction occurred;

(3) a conviction of any offense classified as a class A misdemeanor, or a similar classification in the jurisdiction in which the conviction occurred, that involves any of the following:

(A) A crime whose victim was a client, customer, or other individual with whom the applicant had a professional or fiduciary relationship;

(B) a crime that occurred at the applicant's work site or while the applicant was on work duty;

(C) a crime involving fraud, theft, or misappropriation of another person's money, property, or services;

(D) giving a worthless check or causing unlawful prosecution for a worthless check;

(E) counterfeiting;

(F) criminal use of a financial card;

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(G) a crime classified as a sex offense or requiring registration as a sex offender by the jurisdiction in which the conviction occurred;

(H) a crime involving assault, battery, domestic battery, battery of a law enforcement officer, sexual battery, stalking, or criminal restraint as defined by the jurisdiction in which the conviction occurred;

(I) a crime involving promoting obscenity, promoting material to minors that is harmful, or promoting prostitution;

(J) a crime that involved knowingly violating a protection from abuse order, a protective order, or a restraining order;

(K) cruelty to animals;

(L) a crime involving the unlawful use, possession, or distribution of any illegal drug or controlled substance;

(M) a crime involving the unlawful use or possession of paraphernalia with intent to use to manufacture, cultivate, plant, propagate, harvest, test, analyze, or distribute a controlled substance;

(N) a crime involving harassment by telephone, any telecommunications device, or telefacsimile communication;

(O) unlawful administration of a substance as defined in K.S.A. 2018 Supp. 21-5425, and amendments thereto, or defined as substantially similar in the jurisdiction in which the conviction occurred;

(P) driving under the influence of drugs or alcohol, or any other crime in which the applicant was intoxicated when the applicant committed the crime;

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(Q) a crime involving the abuse, neglect, or exploitation of a child, elderly person, or disabled person as defined by the jurisdiction in which the conviction occurred; or

(R) a crime involving the unlawful use, possession, distribution, or discharge of a firearm; and

(4) conviction of a misdemeanor offense that meets both of the following conditions:

(A) The crime involved at least one of the circumstances described in paragraph (b)(3); and

(B) one of the following conditions is met:

(i) Fewer than five years have passed since the applicant completed the applicant's sentence, including any term of incarceration, probation, or community supervision or payment of any fine, fees, or restitution; or

(ii) the applicant has been convicted of another crime in the five years immediately preceding the date of the application for license.

(c) Civil or administrative records that may disqualify an applicant from receiving a license shall be any records of any court or administrative agency judgment, order, or a settlement in which the applicant admitted or was found to have engaged in conduct that would constitute a violation of the mortuary arts act or any of the implementing regulations. Those records shall not be used to disqualify an applicant for more than five years after the applicant satisfied the judgment, order, or settlement agreement.

(d) Any individual with a criminal, civil, or administrative record described in this regulation may submit a petition on a form provided by the board for an informal, advisory opinion concerning whether the individual's civil, administrative, or criminal record may disqualify the individual from licensure. Each petition shall include the following:

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(1) The details of the individual's civil, administrative, or criminal record, including a copy of each court or administrative record or any settlement by the parties;

(2) an explanation of the circumstances that resulted in the civil, administrative, or criminal record; and

(3) a check or money order in the amount of \$50.00. (Authorized by K.S.A. 65-1712, 65-1723, 65-1730, 65-1766, and 74-120; implementing K.S.A. 65-1751, 65-1766, and 74-120; effective P-_____.)

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**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget**

Proposed

Kansas State Board of Mortuary Arts (KSBMA)
Agency

Mack Smith, Executive Secretary
Agency Contact

785 296-3980
Contact Phone Number

Proposed new regulation 63-5-3
K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to: Division of the Budget
900 SW Jackson, Room 504-N
Topeka, KS 66612

I. Brief description of the proposed rule(s) and regulation(s).

To comply with Senate Substitute for Senate Substitute for House Bill 2386 regarding licensing requirements for certain criminal convictions.

II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)

NA

III. Agency analysis specifically addressing following:

A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

Should result in no change to Kansas funeral homes and crematories.

B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;

The only cost would be the application fee for individuals that wish to utilize the procedure for obtaining an advisory opinion and the cost to the KSBMA when considering any such application.

C. Businesses that would be directly affected by the proposed rule and regulation;

Funeral homes and crematories hiring affected applicants for licensure.

D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

The ability of students entering mortuary college to know if any criminal convictions could possibly present them for licensure.

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- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

Everything will be developed internally.

- F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

Approximately \$500 to develop applications to comply with the regulation.

An estimate, expressed as a total dollar figure, of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

\$500.00. All costs will be incurred and passed along to all licenses regulated by the KSBMA—since we are a fee fund agency.

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES ☐ NO ☒

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

NA

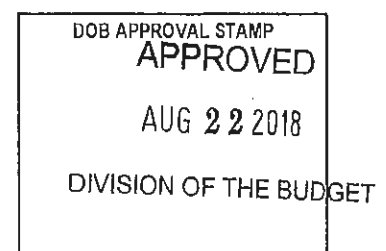
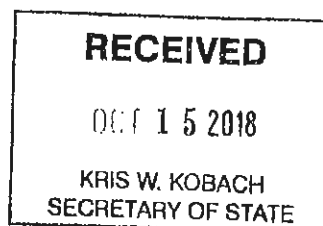
Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

NA

YES ☐ NO ☐

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

NA



- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

The regulation only indirectly involves funeral homes and businesses as it pertains to applicants with criminal convictions yet to be employed at a funeral home/crematory and/or yet to have entered mortuary college.

- I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

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