CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: **State Board of Embalmers and Funeral Directors**

Regulation/Package Title: **5 Year Review**

Rule Number(s): **4717-: 1-01; 1-02; 1-03; 1-04; 2-01; 2-02; 2-03; 2-04; 2-05; 3-01; 4-01; 4-02; 4-03; 4-04; 4-05; 5-01; 5-02; 5-03; 6-01; 6-02; 7-01; 7-02; 7-03; 7-04; 7-05; 8-01; 9-01; 9-02; 10-01; 11-01; 12-01; 13-01.**

Date: **1/31/2017**

Rule Type:

- ☐ **New**
- **X Amended**
- **X 5-Year Review**
- ☐ **Rescinded**

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Regulatory Intent

1. **Please briefly describe the draft regulation in plain language.**

   Attached are ALL 32 Rules impacting the Embalmers and Funeral Directors Board. These Rules impact all actives within the Board and within the Funeral service industry since there are no other "competing" boards or agencies regulating this industry. These Rules range from Definitions to Licensure and from Fees to Forfeitures.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**

   ORC 4717

3. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

   Not Applicable

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

   Not Applicable

5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

   The purpose of the Board is to protect consumers while regulating the funeral service profession by establishing a standard of competency through the licensing of embalmers, funeral directors, crematory facilities, embalming facilities and funeral homes.

   The Board is also regulating an industry that handles financial investments (preneed contracts) for families that expect these funds to be available after the loss of a family member.

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

   While difficult to measure, the fewer preneed contracts that go unfunded from one year to another would be a good and measurable goal. Another measurable goal could be the number of cases that go to "hearing" or to court over licensure, professional conduct, finances etc…

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

   All licensed funeral directors, embalmers, crematory operators etc…are stakeholders. Additionally, there are three active Associations which represent nearly 100% of the funeral service providers in the state. These Associations are the Ohio Funeral Directors Association (OFDA), Buckeye State Funeral Directors & Embalmers Association (BSFDEA) and the Ohio Embalmers Association (OEA).

8. **What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

   During the Fall 2016, OFDA held District meetings throughout the state. The state Board was represented at ALL of these meetings (appx 15) by the President or Treasurer and by the Executive Director at most. During our portion of the meetings, we explained our role as a Regulatory agency and shared many items currently in Rules and many proposed (at the time) changes to existing Rules. Additionally, OFDA was engaged in discussions during the Rule "change" planning discussion prior to our Board taking action to approve the Rules. During our Board meeting on 1/25/2107, OFDA, BSFDEA and a representative from the Cincinnati College of Mortuary Science weighed in on one proposed change. The proposed change was to permit all 18 Continuing Education "hours" to be taken Online vs 9 online/9 classroom. After much discussion during the Board meeting, the Board compromised their position by allowing 12 online/6 classroom.

9. **What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

   Very little scientific data was utilized for the measurable outcomes. Simply a common sense approach applicable to a changing industry initiated by licensed professionals in the funeral service field were considered during our "Rules Committee" meetings held during December and January 2016/2017.

10. **What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

    The two "major" changes being proposed are to allow 12 (of 18) hours of CE to be taken online and allowing Funeral Service professionals to offer CE to a dedicated group vs being forced to offer all CE courses to anyone wanting to participate.

    As was said in #8 above, the Board had proposed allowing all 18 CE hours be offered online. After hearing from stakeholders, the compromise of 12/6 was reached.

    The issue of allowing dedicated CE classes has been discussed for some time. The "Five year Review" is the appropriate time to take this overdue action.

11. **Did the Agency specifically consider a performance-based regulation? Please explain.**

    Not Applicable.

12. **What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

    As the only agency regulating the Funeral Service Industry, duplication of Regulatory action is not an issue.

13. **Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

    We plan to post the Business Impact Analysis and all 32 Rules (those that have been changed and those that were not) on our website for 10 days and send these Rules electronically to all three (3) active Associations that will forward to their membership.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

All licensed funeral directors, embalmers, funeral home operators, funeral homes, crematories, embalming facilities.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance);

The impact of our Rules range from the payment of fees to continuing education hours needed for licensure. Our fees are found at http://codes.ohio.gov/orc/4717.07. These fees were last addressed/changed in 2013. We "fine" licensees for a number of reasons, most often being failure to renew in a timely manner, failure to provide the Board with a current listing of "preneed" contracts and failure to obtain and report their continuing education hours. Fines typically range from $500 - $2,500, depending on the public impact, severity and frequency of the offense.

c. Quantify the expected adverse impact from the regulation.

We have elaborated on the impact of obtaining continuing education (CE) through online and classroom settings throughout this document. Additionally, allowing CE to be offered to a dedicated group versus requiring these educational sessions be opened to all Licensee's will promote additional offerings throughout the state.

Another change found in the proposed Rules is to eliminate the required position of "Manager" at funeral homes. Eliminating this required position will allow funeral homes to operate with an individual "Actually in Charge", versus requiring another management level position. This "stakeholder" led action will help position smaller firms with multiple locations to be competitive with larger firms operating on a better cash flow that may have fewer locations to staff.

15. **Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

    The funeral service profession works with all families at one time or another. Treating families with respect and with a dignified service is an important aspect to their business and their community. It's also an industry whose cash flow and budget are critical to their ongoing efforts to meet the needs of families who have entrusted them to handle very sensitive activities during an emotional time in their lives. As the regulatory agency responsible for enabling practitioners to provide these services, it is our role to protect the public's best interests by providing the standards by which the industry must meet and comply with.

Regulatory Flexibility

16. **Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

    The Board provides exemptions regarding fees and CE hours to all active personnel serving in the Armed Services. We also provide a similar Wavier for practitioners who have actively worked and been licensed in the funeral service industry for 50 years.

17. **How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

    The Board adheres to ORC 119.14 by keeping an "open door policy" for licensee's to call and discuss their violations with Board staff. Board staff will take circumstances into consideration when waving fines but we must be true to our mission of protecting the public's health, safety and investments in the funeral service industry.

18. **What resources are available to assist small businesses with compliance of the regulation?**

    The Board staff is available M-F, 8:00am-5:00pm. Our goal is to assist licensee's and Apprentices obtain the training and tools necessary to operate within the state of Ohio. Our website contains tools, applications, activities and guidance for all funeral service providers and is updated regularly.