

1 HB237
2 189843-2
3 By Representative Brown
4 RFD: Boards, Agencies and Commissions
5 First Read: 16-JAN-18

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8 SYNOPSIS: Under existing federal case law, a statutory
9 law that specifies the race of the members of an
10 appointed board is a violation of the Equal
11 Protection Clause of the U. S. Constitution.

12 This bill would remove specific race
13 requirements relating to the membership of the
14 Alabama Board of Funeral Service.

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16 A BILL
17 TO BE ENTITLED
18 AN ACT

19
20 To amend Sections 34-13-20 and 34-13-23, Code of
21 Alabama 1975, as amended by Act 2017-433, 2017 Regular
22 Session, relating to the Alabama Board of Funeral Service; to
23 remove specific race requirements for membership on the board.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Sections 34-13-20 and 34-13-23 of the
26 Code of Alabama 1975, as amended by Act 2017-433, 2017 Regular
27 Session, are amended to read as follows:

1 "§34-13-20.

2 "(a) There is established the Alabama Board of
3 Funeral Service, consisting of nine members, each of whom
4 shall be citizens of the United States and residents of the
5 State of Alabama.

6 "(b) The appointing authorities shall coordinate
7 their appointments to assure board membership is inclusive and
8 reflects the racial, gender, geographic, urban/rural, and
9 economic diversity of the state. ~~At no time may more than five~~
10 ~~members of the entire membership of the board be of the same~~
11 ~~race or both consumer members be of the same race.~~

12 "(c) Commencing on January 1, 2019, as the terms of
13 the members serving on the board on August 1, 2017, expire,
14 the membership of the board shall be reconstituted to consist
15 of seven professional members and two consumer members.

16 "(1) Each professional member of the board shall be
17 a citizen of the United States, a resident of Alabama, and
18 licensed and in good standing with the board as an embalmer or
19 funeral director at the time of appointment and during the
20 entire term of office. Professional members of the board shall
21 be appointed by the Governor pursuant to subsection (e).

22 "a. Four of the professional members of the board
23 shall hold a current license from the board to practice
24 embalming in the state, shall have been actively practicing
25 embalming in the state for the last 10 consecutive years
26 immediately preceding appointment, and shall be engaged in the
27 practice of embalming at the time of appointment to the board.

1 "b. Three of the professional members of the board
2 shall hold a current license from the board to practice
3 funeral directing in the state, shall have been actively
4 engaged in funeral directing in the state for the last 10
5 consecutive years immediately preceding appointment, and shall
6 be the operator of a funeral establishment in this state at
7 the time of appointment to the board.

8 "(2) Each consumer member of the board shall
9 represent the public in general and shall have been a citizen
10 of the United States and a resident of Alabama for the last 10
11 consecutive years immediately preceding appointment and during
12 the entire term of office. A consumer member of the board may
13 not have held, nor currently hold, a license or certification
14 issued by the board, be employed at any time by, or
15 professionally or financially associated with, the holder of a
16 license or certificate issued by the board, or be related
17 within the third degree of consanguinity or affinity to the
18 holder of a license or certificate issued by the board. One
19 consumer member of the board shall be appointed by the
20 Lieutenant Governor and one consumer member shall be appointed
21 by the Speaker of the House of Representatives pursuant to a
22 procedure adopted by rule of the board.

23 "(d) Commencing in October of 2018, and each October
24 thereafter of a year where at least one professional member
25 term on the board has expired, or is vacant for any reason,
26 all licensed funeral directors and licensed embalmers shall
27 meet in Montgomery, at a time and place fixed by the board,

1 for the purpose of nominating and submitting the names of
2 three licensed persons for each position on the board to the
3 Governor. ~~Not more than two nominees shall be members of the~~
4 ~~same race.~~ The Governor shall promptly appoint one of the
5 three persons so nominated to serve as a professional member
6 of the board.

7 "(e) (1) Professional and consumer members of the
8 board shall serve staggered terms of four years each to
9 provide continuity of service on the board. If an appointment
10 is not made before the expiration of a term, the board member
11 then serving may continue to serve until a successor has been
12 appointed. A board member may not serve more than two full
13 consecutive terms on the board.

14 "(2) A board member who is appointed to fill a
15 vacancy which occurs before the expiration of the term of the
16 vacating member shall serve the remaining portion of the term
17 to which the former member was appointed. If a member is
18 appointed to fill an unexpired term of less than two years,
19 the time may not be counted toward the maximum eight years of
20 service.

21 "(3) Not more than one professional member of the
22 board may reside in the same district as created by Section
23 34-13-21.

24 "(4) At each meeting where nominations are made for
25 the professional members of the board, only one licensed
26 funeral director or licensed embalmer employed by the same
27 funeral establishment may vote.

1 "(f) (1) In accordance with applicable law, in
2 addition to a board member resigning from the board in
3 writing, a board member may be removed from the board for any
4 of the following grounds:

5 "a. The refusal or inability to perform board duties
6 in an efficient, responsible, or professional manner.

7 "b. The misuse of his or her position on the board
8 to obtain financial gain or seek personal advantage for
9 himself, herself, or another person.

10 "c. A final adjudication or determination of guilt
11 by any lawful authority of the board member or sanction of the
12 board member for the violation of any law the board determines
13 is substantially related to any practice governed by this
14 chapter.

15 "d. The revocation or suspension of the license of a
16 professional member of the board.

17 "(2) Any board member who fails to qualify after
18 appointment shall automatically become ineligible to serve as
19 a member of the board and a new member, properly qualified,
20 shall be appointed in the same manner as the original
21 appointment and shall serve the remainder of the term of the
22 vacating board member.

23 "(3) If a consumer board member fails to attend two
24 or more meetings within a year, without a valid excuse as
25 determined by the board, he or she shall be removed from the
26 board. A new consumer board member shall be appointed in the

1 same manner as the original appointment and shall serve the
2 remainder of the term.

3 "§34-13-23.

4 "(a) (1) The board appointed under this chapter and
5 each successor thereto is authorized to select from its own
6 membership a chair and to adopt and promulgate such rules and
7 regulations for the transaction of its business and for the
8 betterment and promotion of the standards of service and
9 practice to be followed in the funeral service profession in
10 the State of Alabama as the board may deem expedient and
11 consistent with the laws of this state and for the public
12 good.

13 "(2) The chair shall preside at all meetings of the
14 board unless otherwise ordered, and he or she shall exercise
15 and perform all duties and functions incident to the office of
16 chair.

17 "(3) The board may select also from its own
18 membership a vice chair, a secretary, and a treasurer. No two
19 offices shall be held by the same person. ~~The chair and vice~~
20 ~~chair may not be of the same race.~~

21 "(b) The treasurer shall give bond to the State of
22 Alabama in the sum of ten thousand dollars (\$10,000), and any
23 premium payable for the bond shall be paid from the funds of
24 the board. The bond shall be deposited with the Treasurer of
25 the State of Alabama.

26 "(c) Board members shall be reimbursed for their
27 necessary traveling expenses and the necessary expenses

1 incident to their attendance upon the business of the board,
2 and, in addition thereto, they shall receive the sum of fifty
3 dollars (\$50) per diem for every day not to exceed 20 days per
4 year actually spent by the member upon the business of the
5 board. The board may employ an executive director and
6 associate executive director who shall each receive and be
7 paid an annual salary to be fixed by the board, but not to
8 exceed the salary level established and paid to cabinet
9 officers in the state government. The salary shall be paid on
10 a semimonthly basis. In addition, the executive director and
11 associate executive director shall receive his or her
12 necessary traveling and other incidental expenses as are
13 incurred in the performance of duties, and all expenses, per
14 diem, and compensation shall be paid out of the receipts of
15 the board. At no time shall the operation of the board be an
16 expense to the state, and at no time shall expenses of the
17 board exceed the receipts of the board.

18 "(d) The executive director of the board shall have
19 complete supervision and be held responsible for the direction
20 of the office of the board, shall have supervision over field
21 inspection and enforcement of this chapter, and shall be
22 responsible and answerable to the board. The associate
23 executive director shall assist the executive director and
24 perform such other duties as may be assigned to him or her by
25 the board. ~~The executive director and associate executive~~
26 ~~director shall not be of the same race.~~

1 "(e) The executive director shall keep a record in
2 which shall be registered the name and business address of
3 every person to whom licenses have been granted in accordance
4 with this chapter, the number and date of the license and the
5 date of each renewal. Upon request to do so, the executive
6 director shall supply each person licensed for the practice of
7 embalming and funeral directing with a list of all persons and
8 establishments holding a license under this chapter, then in
9 force, giving the names of the persons, their business
10 addresses, and the numbers of their licenses.

11 "(f) It shall be the duty of the executive director
12 to prepare under the direction of the board and cause to be
13 printed all forms required by this chapter to be prescribed by
14 the board. All notices required to be mailed by this chapter
15 shall be directed to the last known post office address of the
16 party to whom the notice is sent.

17 "(g) The executive director shall serve at the
18 pleasure of the board and shall perform duties as may be
19 necessary for the proper functioning of the board as the board
20 may determine or as may be prescribed in this chapter. During
21 the employment of the executive director he or she may not be
22 employed by any funeral establishment.

23 "(h) All fees and fines received under this chapter
24 shall be paid into a special fund in the State Treasury to be
25 known as the Alabama State Funeral Directors and Embalmers
26 Fund, which is hereby created, for the necessary and proper
27 expenses of the board, and for a reasonable reserve for future

1 use by the board. All moneys in the fund are hereby
2 appropriated, as a continuing appropriation, to the board to
3 be used for carrying out this chapter.

4 "(i) Each member of the board, the executive
5 director, the associate executive director, designated
6 employees, and independent contractors of the board
7 appropriately identified are authorized at any given time on
8 complaint or for inspection purposes to enter the office,
9 premises, establishment, or place of business of any funeral
10 service licensee in the State of Alabama or any office,
11 premises, establishment, or place where the practice of
12 funeral service is carried on, or where the practice is
13 advertised as being carried on, for the purpose of inspecting
14 the office, premises, records, or establishment and for the
15 purpose of inspecting the license and registration of any
16 funeral service licensee and apprentice trainee operating
17 therein.

18 "(j) All members of the board or designated
19 employees of the board may serve and execute any process
20 issued by any court under this chapter and to serve and
21 execute any papers or process issued by the board or any
22 officer or member thereof under this chapter.

23 "(k) The board may employ clerical assistants and
24 employees or other help as necessary to carry out this
25 chapter, and the terms and conditions of employment shall be
26 determined by the board. The board may establish and equip an
27 office from which this chapter may be carried out."

1 Section 2. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.