

HOUSE BILL REPORT

SSB 5752

As Passed House - Amended:

April 6, 2005

Title: An act relating to funeral directors and cemeteries.

Brief Description: Concerning funeral services.

Sponsors: By Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Prentice, Honeyford and Kohl-Welles).

Brief History:

Committee Activity:

Commerce & Labor: 3/17/05, 3/30/05 [DPA].

Floor Activity:

Passed House - Amended: 4/6/05, 94-0.

Brief Summary of Substitute Bill (As Amended by House)

- Makes technical, clarifying, and substantive changes to the funeral, cemetery, and vital records statutes.
- Creates an academic internship at funeral establishments and terminates apprenticeships, and creates application requirements for examinations.
- Changes the makeup of the Cemetery Board, creates investment requirements, and changes the rights to unoccupied cemetery spaces.
- Consolidates the right to control the disposition of human remains, creates a Cemetery Account in the State Treasury, and alters the vital records and filing requirements of the existing law.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 7 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Sump, Assistant Ranking Minority Member; Crouse, Hudgins and McCoy.

Staff: Rebekah Ward (786-7106).

Background:

The licensing of funeral directors and embalmers was enacted in 1937, funeral establishments in 1977, and crematories in 1985. As of 2004, there were 567 active funeral director licenses, 285 apprentice funeral directors, and 221 funeral establishments. The cemetery laws were enacted in 1943, and the Cemetery Board (Board) was created in 1953. The statutes have not been updated in nearly a decade with the changes that have occurred within the industry and profession.

Funeral Directors and Embalmers

Applications to take the examinations to become a licensed funeral director or embalmer are filed with the Director of the Department of Licensing (DOL) at least 45 days before the exam. These exams are offered four times a year.

In order to become a licensed funeral director, one must be at least 18 years of age, be of good moral character, complete an Associates of Applied Arts in Mortuary Science or a course of instruction not less than two years from an accredited college, and pay a licensing fee. Licenses are renewable for one-year periods and 10 hours of continuing education is required every two years for new licenses. If a license has lapsed for more than one year, the applicant may submit other proof of competency approved by the Board.

Additionally, there are apprenticeship programs under which an apprentice funeral director participates in one year of apprenticeship training consisting of 1,800 hours of employment under a licensed funeral director in Washington, and also participates in a certain number of funeral arrangements. Apprentices must also complete four and a half hours of AIDS education and training unless they have completed mortuary school within a certain time period.

In order to become a licensed embalmer, one must also be 18 years of age, of good moral character, and obtain an Associate of Applied Arts in Mortuary Science or complete a college program consisting of 60 semester hours or 90 quarter hours. Apprentice embalmers must complete two years of apprentice training consisting of 3,600 hours of employment and embalming of at least 50 human remains under the supervision of a licensed embalmer in Washington.

Cemetery Laws and Vital Records

The Board consists of six members. Two members must have legal or accounting experience and three members must have experience in active administrative management of a cemetery authority. The Board must meet twice a year to conduct business.

The right to control the disposition of human remains becomes an issue in a situation where the decedent has not made pre-arrangements regarding the disposition of his or her remains and who has the authority to control the disposition. Right to control statutes are found under both the funeral and cemetery statutes. The disposition of human remains in any place other than a cemetery is punishable as a misdemeanor.

Death certificates may be filed by funeral directors or persons in charge of interment, and must be signed by an attending physician or coroner and filed with the local registrar within a certain time period following the death. The law does not prohibit consumers from preparing their own dead for disposition, but certain requirements must be met if this is to happen. Embalming or refrigeration is required if disposition has not been accomplished within 24 hours.

Where human remains are in the possession of a person or entity for a period of one year, and the relatives or persons interested in the remains have failed to direct the disposition of the remains, the remains may be disposed of in a lawful manner by the person or entity in lawful possession.

The ownership or right to an unoccupied cemetery space is considered abandoned if it is neglected and in a state of disrepair for a period of five years, and proper notice has been given. Cemetery management may reclaim unoccupied space after proper notice over a five-month period by filing a petition for an order of abandonment with the superior court.

Funeral Trust Funds

The funeral and cemetery prearrangement trust fund laws require that firms hold investment instruments in public depository.

Endowment care statements must be filed with the Board by cemetery authorities or their trustees upon request of the Board. Where the funds total more than \$500,000, the statement must be verified by a certified public accountant.

Payments or contributions for general endowment care are invalid if the beneficiary designations are indefinite or uncertain, or if they violate the rule of pertuity or power or alienation of title.

Where a master trust fund is utilized by more than one participating funeral establishment, expenses for examinations (required to take place every three years) must be shared jointly by all participating funeral establishments.

Additionally, there are certain deposit requirements into a prearranged trust fund which are specified when prearranged contracts for merchandise or services are utilized.

Funeral Director and Embalmer Account

Fund balances that are remaining in the Health Professions Account and are attributable to the funeral director and embalmer professions are transferred to the Funeral Director and Embalmer Account.

Cemetery Fund

The Cemetery Fund is subject to appropriation by the Legislature.

Liability for Civil Actions

Persons who violate this chapter are liable in a civil action by and in the name of the State Cemetery Board.

Summary of Amended Bill:

Various technical, clarifying, and substantive changes are made to the funeral, cemetery, and vital records statutes. Major changes include the following:

Funeral Directors and Embalmers

An academic internship is created. An academic intern is a student enrolled in an accredited college funeral service education program who is serving his or her three-month internship at a Washington funeral establishment, as required for graduation.

Funeral directing or embalming apprenticeships are changed to internships.

Applicants to take the examination to become a licensed funeral director or embalmer are filed with the Director of the Department of Licensing (DOL) at least 15 days before the exam, instead of 45 days.

All duties requiring a license must be performed by a licensee or registered intern. If a license has lapsed for more than one year, the applicant will be required to take the examination and will not have the option of submitting proof of competency.

Cemetery Laws and Vital Records

A definition for "scattering" and a "scattering garden" is created. A scattering garden means a designated area in a cemetery for the scattering of cremated human remains. Definitions for human remains and cremated human remains are also created. A definition of "interment right" is created and means a right to inter human remains in a particular space in a cemetery.

The Cemetery Board (Board) consists of five members instead of six, and persons who have a financial interest (directly or indirectly) are no longer disqualified from eligibility to serve on the Board. Additionally, two members of the Board are no longer required to have legal or accounting experience, and one member must represent the general public and not have a financial interest in the cemetery business. Four members are required to have experience in active administrative management of a cemetery authority (this is an increase from the previous requirement of three). The Board is required to meet only once a year to conduct business rather than twice.

The Director of the DOL is empowered to employ the necessary staff to carry out the duties of the funeral director laws.

Cash advancements as accommodations for persons making funeral arrangements are no longer required to match items billed in itemized billing statements by funeral directors or their employees.

Embalming or refrigeration by licensees must take place within 24 hours of the receipt of human remains.

The ownership or right to unoccupied cemetery space is considered abandoned if it is neglected and in a state of disrepair for a period of three years. After this three-year period of alleged abandonment, the cemetery management may reclaim the unoccupied space after proper notice by filing a petition for an order of abandonment with the superior court. The current notice requirement which prohibits notice from being placed on the unoccupied space until 20 years have elapsed since the last interment in that lot remains in place.

The right to control the disposition of human remains is consolidated under the cemetery laws. With specified approval, cremated remains may be disposed of on private or public property.

A Certificate of Removal Registration is created and permits funeral establishments licensed in Oregon or Idaho to remove human remains from Washington prior to submitting a completed certificate of death. Certificates of Removal Registration are issued by the Director of the Department of Licensing after application for such certificate and payment of a fee by the applicant. In cases where there is more than one funeral branch establishment, each branch is considered a separate establishment. Sanctions may be imposed on holders of Certificate of Removal Registration where there is found to be a violation of a death care statute or rule. Expiration dates are also established on the Certificate of Removal.

Only funeral directors may file death certificates, and the funeral directors must sign the death certificates prior to filing them.

Where human remains are in the possession of a person or entity for a period of 60 days, and the relatives or persons interested in the remains have failed to direct the disposition of the remains, the remains may be disposed of in a lawful manner by the person or entity in lawful possession.

Endowment and Prearrangement Funeral Trusts

The Board's authority to inspect endowment care funds is expanded to include access to records pertaining to prearrangement trust funds in order to verify compliance with applicable laws. Endowment care and pre-arrangement trust fund accounting reports must be filed with the Board by cemetery authorities or their trustees within 90 days after the close of the accounting year rather than upon request by the Board. Reports must be maintained for a period of seven years. Verification by a certified public accountant of the reports is no longer required for funds totaling more than \$500,000.

Payments or contributions for general endowment care is no longer invalid by reason of indefiniteness or uncertainty of the persons designated as beneficiaries. Invalidity due to violations of the laws against perpetuities, or suspension of the power of alienation of title to property is also eliminated.

Where a master trust fund is utilized by more than one participating funeral establishment, expenses for examinations of the pre-arrangement funeral trust are no longer required to be shared jointly by all participating funeral establishments.

Where pre-arrangement contracts for merchandise or services are sold, new deposit requirements are created which specify amounts that are to be deposited into the pre-arrangement trust fund.

Funeral Director and Embalmer Account

Fund balances that are remaining in the Health Professions Account attributable to the funeral director and embalmer professions will no longer be transferred to the Funeral Directors and Embalmers Account.

Cemetery Account

The appropriated Cemetery Fund is changed to a non appropriated Cemetery Account (Account) in the custody of the State Treasurer. All monies received under the cemetery laws must be deposited into the Account. Only the Board may authorize expenditures.

Liability For Civil Actions

Persons who violate this chapter are liable in a civil action by and in the name of the Archeological and Historical Division of the Department of Community, Trade, and Economic Development.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The State Cemetery Board as well as the Department of Health (DOH) and Department of Licensing (DOL) have been involved in this two year rewrite effort to update the state cemetery, vital records, and funeral director laws which have not been updated in over a decade. Although no one law or form of the law will solve everybody's issues, this is the best effort to address current issues that have been raised, and attempts to make the laws surrounding these issues easier to read. This legislation is very similar to the laws in Oregon, and similar legislation has been passed in other states. Oregon, for example, passed a law allowing funeral directors to come to Washington, because a lot of the major hospitals for residents in Vancouver, Washington are located in Portland, Oregon, and therefore interstate removals of human remains are common. Idaho also currently has proposed legislation which is similar to the removal portions of the current bill in Washington.

There are several loopholes which exist in the current law which this bill attempts to address. For example, over 60 percent of the people in Washington are cremated rather than buried, and

this is an issue because cremated remains are no longer considered human remains under the statutes. Therefore, there is no violation if someone were to break into a place where cremated remains were stored and steal those remains.

Additionally, there is also a loophole in the death certificate certification process which carries the potential for increased rates of assisted suicide cases, and life insurance fraud with no way to monitor such occurrences because under the current law, no one other than the family members see the body prior to burial or cremation. The DOH is not however opposed to allowing the current signing and filing requirements to remain in place. Electronic filing of death certificates is another change which will go into effect in June of this year.

Another issue in the current law is with the educational requirements for funeral directors and embalmers. There is no funeral service college in Washington and the closest institution is in Gresham, Oregon at Mount Hood Community College. The small number of educational facilities in the state is one reason why internship programs have been created.

Embalming requirements under the existing law are also addressed in the bill.

The section regarding liability for civil actions and the name in which civil actions may be brought, (section 151) appears to be driving a fiscal note which all parties would like to avoid. Therefore, there is no opposition to reverting back to the original language.

Testimony Against: There are a number of good changes which are made by this bill, however there are also some changes that are not supported. The new death certificate filing change in the bill for example is misguided. There are a number of safeguards already in place which protect against the types of activities which the change is seeking to address. For example, hospice, and social workers, as well as nurses look out for the types of fraud that the new filing requirement seeks to remedy. There are also several procedures in place for reporting of such occurrences, and there is a new concern raised by the bill with regard to the potential for funeral director fraud.

Another issue surrounding the death certificates and the new filing requirements which are imposed by the bill are cultural, religious, economic and family or personal preferences in terms of caring for the dead in one's own home. For many, filling out the death certificate form can be part of the healing process, and these types of spiritual needs should be respected. Calling in a funeral director at such a sensitive time in a person's life is unfounded and also raises the potential for hard selling pressures in terms of services or merchandise. Additionally, requiring that funeral director sign and file the death certificate makes the licensed funeral director responsible for any subsequent violations of death care statutes or laws. Therefore, the funeral director may be less likely to respect the families' personal preferences in terms of preparation of their deceased family member, relative, or friend. It also adds an additional expense.

The potential for forging of signatures on death certificates or other similar types of fraud are easily remedied with oversight and checking by the DOH rather than changing the current filing requirements under the law.

Persons Testifying: (In support) Jon Donnellan, Department of Licensing; Jennifer Tebaldi, Department of Health; James Noel, Washington State Funeral Director's Association; and John Forkner, Washington Cemetery and Funeral Association.

(Opposed) Char Barrett; Annie McManus; Sheri Gerson; and Barbara Trites, citizens.

Persons Signed In To Testify But Not Testifying: None.