

HOUSE BILL NO. 118

INTRODUCED BY CODY

BY REQUEST OF THE DEPARTMENT OF COMMERCE

IN THE HOUSE

JANUARY 11, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
	FIRST READING.
JANUARY 26, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
	STATEMENT OF INTENT ADOPTED.
JANUARY 27, 1989	PRINTING REPORT.
JANUARY 28, 1989	SECOND READING, DO PASS.
JANUARY 30, 1989	ENGROSSING REPORT.
JANUARY 31, 1989	THIRD READING, PASSED. AYES, 85; NOES, 12.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 2, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
	FIRST READING.
MARCH 9, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 10, 1989	SECOND READING, CONCURRED IN.
MARCH 13, 1989	THIRD READING, CONCURRED IN. AYES, 44; NOES, 0.
	RETURNED TO HOUSE.

MARCH 14, 1989

IN THE HOUSE

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 118
 2 INTRODUCED BY Anthony A. Coley
 3 BY REQUEST OF THE DEPARTMENT OF COMMERCE
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW ON THE
 6 PRACTICE OF FUNERAL DIRECTING AND MORTUARY SCIENCE;
 7 AUTHORIZING ADMINISTRATIVE FINES; CLARIFYING THE TERM OF
 8 MORTUARY LICENSES; PROVIDING FOR MANDATORY INITIAL FACILITY
 9 INSPECTIONS; AUTHORIZING INSPECTION AND RENEWAL FEES;
 10 AMENDING SECTIONS 37-19-101, 37-19-311, AND 37-19-401
 11 THROUGH 37-19-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
 12 DATE."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 **Section 1.** Section 37-19-101, MCA, is amended to read:

16 "37-19-101. Definitions. Unless the context requires
 17 otherwise, in this chapter the following definitions apply:

18 (1) "Board" means the board of morticians provided for
 19 in 2-15-1853.

20 (2) "Department" means the department of commerce
 21 provided for in Title 2, chapter 15, part 18.

22 (3) "Embalming" means the preservation and
 23 disinfection of the dead human body by application of
 24 chemicals, externally, internally, or both.

25 (4) "Funeral directing" includes:

1 (a) supervising funerals, including the making of
 2 preneed or at-need contractual arrangements for funerals;

3 (b) preparing dead bodies for burial, other than by
 4 embalming;

5 (c) maintaining a mortuary for the preparation,
 6 disposition, or care of dead human bodies; and

7 (d) the holding out to the public that one is a
 8 funeral director or undertaker.

9 (5) "Mortuary science" is the profession or practice
 10 of funeral directing and embalming.

11 (6) A "mortician" is a person licensed under this
 12 chapter to practice mortuary science.

13 (7) A "mortuary" is a place of business used for the
 14 care and preparation for burial or transportation of dead
 15 human bodies or a place where a person represents himself as
 16 engaged in the profession of mortuary science or funeral
 17 directing."

18 **Section 2.** Section 37-19-311, MCA, is amended to read:

19 "37-19-311. Refusal, suspension, or revocation of
 20 mortician's or funeral director's license -- fine. (1) The
 21 board may refuse to grant, may suspend, or may revoke a
 22 mortician's or funeral director's license for any of the
 23 following reasons:

24 (1)(a) if the applicant or licensee obtained the
 25 license by fraud or misrepresentation, either in the

1 application for the license or in passing the examination;

2 †2†(b) if the applicant or licensee has violated any
3 section of this chapter or any rule of the state, district,
4 or local board of health governing the disposition of dead
5 human bodies or any rule of the board regulating the
6 professions of mortuary science or funeral directing or the
7 operation of a mortuary;

8 †3†(c) if the licensee has participated in any scheme
9 in the nature of a burial association or burial certificate
10 plan:

11 †a†(i) which does not properly protect the rights of
12 the public;

13 †b†(ii) where there is any element of fraud; or

14 †c†(iii) where there is contained any agreement or
15 provision that deprives heirs, next of kin, or any other
16 authorized person freedom of choice as to the services or
17 merchandise used in connection with a funeral or the freedom
18 of choice as to which funeral directors or morticians shall
19 be employed; or

20 †4†(d) if the applicant or licensee violates rules
21 adopted by the board which define unprofessional conduct on
22 the part of applicants and licensees.

23 (2) The board may impose an administrative fine of not
24 more than \$1,000 per incident for any violation that could
25 result in the suspension or revocation of a mortician's or

1 funeral director's license."

2 **Section 3.** Section 37-19-401, MCA, is amended to read:

3 "37-19-401. License required -- display of license --
4 renewal -- penalty for late renewal. (1) An operating
5 mortuary must be licensed by the board. The license must be
6 displayed in a conspicuous place.

7 (2) A mortuary license expires on June 30 of each year
8 and may be renewed upon payment of a fee set by the board.

9 (3) The board may set a penalty for late renewal of a
10 mortuary license."

11 **Section 4.** Section 37-19-402, MCA, is amended to read:

12 "37-19-402. Operator's license requirement
13 requirements -- facility inspections -- transfer of license
14 to new facility. (1) The operation of a mortuary is
15 prohibited by anyone not holding a mortician's or funeral
16 director's license.

17 (2) A license to operate a new mortuary facility in
18 Montana may be issued only if the proposed mortuary facility
19 meets standards for operating mortuaries adopted by the
20 board.

21 (3) (a) An applicant for a license to operate a new
22 mortuary shall send to the department a written and verified
23 application on a form prescribed by the board. The
24 application must be accompanied by an initial inspection
25 fee.

1 (b) The department shall inspect the proposed new
 2 mortuary and report its findings to the board.

3 (4) The board shall grant a license if the department
 4 determines that the proposed new facility meets the
 5 standards adopted by the board and will be operated by a
 6 person who has been issued a mortician's or a funeral
 7 director's license.

8 (5) The board may grant a temporary license to a
 9 mortuary until the initial inspection is completed.

10 (6) A mortuary license may be transferred from one
 11 facility to another only when the proprietor of a licensed
 12 facility terminates services at the licensed facility and
 13 commences services at a new facility. The new facility must
 14 be inspected and must meet standards for operating
 15 mortuaries.

16 (7) A mortuary may be inspected by members of the
 17 board or their representatives during business hours."

18 **Section 5.** Section 37-19-403, MCA, is amended to read:

19 "**37-19-403. Power of board to set facility standards**
 20 **--inspection -- fees.** (1) The board may adopt rules
 21 prescribing reasonable standards for operating mortuaries,
 22 including minimum requirements for drainage, ventilation,
 23 and instruments; ~~and.~~ The board may inspect the premises of
 24 a mortuary establishment to determine if such rules are
 25 complied with. ~~Such inspection or inspections shall be made~~

1 Inspections are at the discretion of the board and may be
 2 without notice. An initial inspection is mandatory.

3 (2) The board may charge the operator an inspection
 4 fee, including an initial inspection fee, to be set at the
 5 discretion of the board. Fees must be commensurate with
 6 costs."

7 **Section 6.** Section 37-19-404, MCA, is amended to read:

8 "**37-19-404. Suspension, revocation of mortuary**
 9 **license.** A mortuary license may be suspended or revoked upon
 10 proof of:

11 (1) noncompliance of board rules relating to the
 12 operation of mortuaries;

13 (2) violation of any of the laws or rules of the
 14 state, district, or local board of health governing the
 15 disposition of dead human bodies; or

16 (3) violation of any rule of the board regulating the
 17 practice of mortuary science and funeral directing; or

18 (4) nonpayment of renewal fees."

19 **NEW SECTION. Section 7. Extension of authority.** Any
 20 existing authority to make rules on the subject of the
 21 provisions of [this act] is extended to the provisions of
 22 [this act].

23 **NEW SECTION. Section 8. Effective date.** [This act] is
 24 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB118, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

HB118 revises the law on the practice of funeral directing and mortuary science by authorizing administrative fines, providing for mandatory initial facility inspections, authorizing inspections and renewal fees, and clarifying the term of mortuary licenses.

ASSUMPTIONS:

1. The purpose of the legislation is to clarify and codify current board practices and procedures.
2. There is no fiscal impact.

Ray Shackelford 1/18/89
RAY SHACKLEFORD, BUDGET DIRECTOR DATE
OFFICE OF BUDGET AND PROGRAM PLANNING

Dorothy A. Cody
DOROTHY A. CODY, PRIMARY SPONSOR DATE

Fiscal Note for HB118, as introduced

APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

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STATEMENT OF INTENT

A statement of intent is required for this bill because it grants authority to the board of morticians to adopt rules for:

(1) the imposition of fines in disciplinary actions for unprofessional conduct. Fines may be levied for any conduct for which a mortician's or funeral director's license could be revoked or suspended.

(2) the setting of standards for operating mortuary facilities to assure adherence to sanitary and safety provisions;

(3) the collection of fees and charges for mortuaries,

which fees or charges must be commensurate with costs incurred for the services; and

(4) the establishment of reasonable application forms for operation of a new mortuary and transfer fees required to allow the transfer of a license to a new facility.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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1 funeral director or undertaker.

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3 of funeral directing and embalming.

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18 license by fraud or misrepresentation, either in the
19 application for the license or in passing the examination;

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21 section of this chapter or any rule of the state, district,
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23 human bodies or any rule of the board regulating the
24 professions of mortuary science or funeral directing or the
25 operation of a mortuary;

1 (3)(c) if the licensee has participated in any scheme
2 in the nature of a burial association or burial certificate
3 plan:

4 (a)(i) which does not properly protect the rights of
5 the public;

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9 authorized person freedom of choice as to the services or
10 merchandise used in connection with a funeral or the freedom
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15 the part of applicants and licensees.

16 (2) The board may impose an administrative fine of not
17 more than \$1,000 per incident for any violation that could
18 result in the suspension or revocation of a mortician's or
19 funeral director's license. ANY FINE COLLECTED MUST BE
20 DEPOSITED IN THE STATE GENERAL FUND."

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22 "37-19-401. License required -- display of license --
23 renewal -- penalty for late renewal. (1) An operating
24 mortuary must be licensed by the board. The license must be
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(2) A mortuary license expires on June 30 of each year and may be renewed upon payment of a fee set by the board.

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to new facility. (1) The operation of a mortuary is prohibited by anyone not holding a mortician's or funeral director's license.

(2) A license to operate a new mortuary facility in Montana may be issued only if the proposed mortuary facility meets standards for operating mortuaries adopted by the board.

(3) (a) An applicant for a license to operate a new mortuary shall send to the department a written and verified application on a form prescribed by the board. The application must be accompanied by an initial inspection fee.

(b) The department shall inspect the proposed new mortuary and report its findings to the board.

(4) The board shall grant a license if the department determines that the proposed new facility meets the standards adopted by the board and will be operated by a person who has been issued a mortician's or a funeral

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Section 5. Section 37-19-403, MCA, is amended to read:

"37-19-403. Power of board to set facility standards
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Inspections are at the discretion of the board and may be without notice. An initial inspection is mandatory.

(2) The board may charge the operator an inspection fee, including an initial inspection fee, to be set at the discretion of the board. Fees must be commensurate with costs."

1 **Section 6.** Section 37-19-404, MCA, is amended to read:

2 "37-19-404. Suspension, revocation of mortuary
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13 NEW SECTION. **Section 7.** Extension of authority. Any
14 existing authority to make rules on the subject of the
15 provisions of [this act] is extended to the provisions of
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25 operation of a mortuary;

1 {3}{c} if the licensee has participated in any scheme
2 in the nature of a burial association or burial certificate
3 plan:

4 {a}{i} which does not properly protect the rights of
5 the public;

6 {b}{ii} where there is any element of fraud; or

7 {c}{iii} where there is contained any agreement or
8 provision that deprives heirs, next of kin, or any other
9 authorized person freedom of choice as to the services or
10 merchandise used in connection with a funeral or the freedom
11 of choice as to which funeral directors or morticians shall
12 be employed; or

13 {4}{d} if the applicant or licensee violates rules
14 adopted by the board which define unprofessional conduct on
15 the part of applicants and licensees.

16 (2) The board may impose an administrative fine of not
17 more than \$1,000 per incident for any violation that could
18 result in the suspension or revocation of a mortician's or
19 funeral director's license. ANY FINE COLLECTED MUST BE
20 DEPOSITED IN THE STATE GENERAL FUND."

21 **Section 3.** Section 37-19-401, MCA, is amended to read:

22 "37-19-401. License required -- display of license --
23 renewal -- penalty for late renewal. (1) An operating
24 mortuary must be licensed by the board. The license must be
25 displayed in a conspicuous place.

1 (2) A mortuary license expires on June 30 of each year
 2 and may be renewed upon payment of a fee set by the board.

3 (3) The board may set a penalty for late renewal of a
 4 mortuary license."

5 **Section 4.** Section 37-19-402, MCA, is amended to read:

6 "37-19-402. Operator's license requirement
 7 requirements -- facility inspections -- transfer of license
 8 to new facility. (1) The operation of a mortuary is
 9 prohibited by anyone not holding a mortician's or funeral
 10 director's license.

11 (2) A license to operate a new mortuary facility in
 12 Montana may be issued only if the proposed mortuary facility
 13 meets standards for operating mortuaries adopted by the
 14 board.

15 (3) (a) An applicant for a license to operate a new
 16 mortuary shall send to the department a written and verified
 17 application on a form prescribed by the board. The
 18 application must be accompanied by an initial inspection
 19 fee.

20 (b) The department shall inspect the proposed new
 21 mortuary and report its findings to the board.

22 (4) The board shall grant a license if the department
 23 determines that the proposed new facility meets the
 24 standards adopted by the board and will be operated by a
 25 person who has been issued a mortician's or a funeral

1 director's license.

2 (5) The board may grant a temporary license to a
 3 mortuary until the initial inspection is completed.

4 (6) A mortuary license may be transferred from one
 5 facility to another only when the proprietor of a licensed
 6 facility terminates services at the licensed facility and
 7 commences services at a new facility. The new facility must
 8 be inspected and must meet standards for operating
 9 mortuaries.

10 (7) A mortuary may be inspected by members of the
 11 board or their representatives during business hours."

12 **Section 5.** Section 37-19-403, MCA, is amended to read:

13 "37-19-403. Power of board to set facility standards
 14 --inspection -- fees. (1) The board may adopt rules
 15 prescribing reasonable standards for operating mortuaries,
 16 including minimum requirements for drainage, ventilation,
 17 and instruments, and. The board may inspect the premises of
 18 a mortuary establishment to determine if such rules are
 19 complied with. ~~Such inspection or inspections shall be made~~
 20 Inspections are at the discretion of the board and may be
 21 without notice. An initial inspection is mandatory.

22 (2) The board may charge the operator an inspection
 23 fee, including an initial inspection fee, to be set at the
 24 discretion of the board. Fees must be commensurate with
 25 costs."

1 **Section 6.** Section 37-19-404, MCA, is amended to read:

2 "37-19-404. Suspension, revocation of mortuary
3 license. A mortuary license may be suspended or revoked upon
4 proof of:

5 (1) noncompliance of board rules relating to the
6 operation of mortuaries;

7 (2) violation of any of the laws or rules of the
8 state, district, or local board of health governing the
9 disposition of dead human bodies; or

10 (3) violation of any rule of the board regulating the
11 practice of mortuary science and funeral directing; or

12 (4) nonpayment of renewal fees."

13 **NEW SECTION. Section 7.** Extension of authority. Any
14 existing authority to make rules on the subject of the
15 provisions of [this act] is extended to the provisions of
16 [this act].

17 **NEW SECTION. Section 8.** Effective date. [This act] is
18 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB119, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act increasing the fee for personalized license plates from \$20 to \$50; providing for equal disposition of the fee into the county general fund and the Motor Vehicle Recording Account.

ASSUMPTIONS:

1. Approximately 12,000 original applications for personalized plates are processed each year. The fee increase will reduce the volume by one-third, leaving an estimated 8,000 applications processed each year of the biennium.
2. The cost of manufacturing a set of vehicle license plates is \$2.

FISCAL IMPACT:

	Current	FY90 Proposed		Current	FY91 Proposed	
<u>Expenditures:</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>
Operating Expenses	\$ 24,000	\$ 16,000	(\$ 8,000)	\$ 24,000	\$ 16,000	(\$ 8,000)
<u>Revenue:</u>						
Motor Vehicle-State						
Special	\$240,000	\$200,000	(\$ 40,000)	\$240,000	\$200,000	(\$ 40,000)
County General Fund	-0-	200,000	200,000	-0-	200,000	200,000

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

The county general fund would receive 50% of the revenues generated by this bill.

Ray Shackelford 1/17/89
 RAY SHACKLEFORD, BUDGET DIRECTOR DATE
 OFFICE OF BUDGET AND PROGRAM PLANNING

Roger Knapp 1/17/89
 ROGER KNAPP, PRIMARY SPONSOR DATE
 Fiscal Note for HB119, as introduced

HB 119