

HOUSE BILL 509

Introduced by Pavlovich, et al.

2/06	Introduced
2/06	Referred to Business & Economic Development
2/06	First Reading
2/12	Hearing
2/13	Committee Report--Bill Passed as Amended
2/15	2nd Reading Passed
2/17	3rd Reading Passed
	Transmitted to Senate
2/20	First Reading
2/20	Referred to Business & Industry
3/24	Hearing
3/24	Tabled in Committee

1 *House* BILL NO. *509*  
2 INTRODUCED BY *Carlton Burnett Simon Bennett*  
3 BY REQUEST OF THE HOUSE COMMITTEE ON  
4 BUSINESS AND ECONOMIC DEVELOPMENT  
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A PERSON TO  
7 GIVE BINDING INSTRUCTIONS THAT THE PERSON'S REMAINS BE  
8 CREMATED OR DISPOSED OF BY OTHER LAWFUL MEANS; AND AMENDING  
9 SECTIONS 37-19-101 AND 37-19-311, MCA."  
10

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

12 NEW SECTION. Section 1. Instructions for disposition  
13 of person's remains. A person may provide written  
14 instructions as part of a prearranged funeral plan for  
15 disposition of the person's remains through cremation or  
16 other lawful means. The person shall execute the instrument  
17 containing the instructions with proof of acknowledgment as  
18 provided in 1-5-101.

19 NEW SECTION. Section 2. Person's directions to be  
20 followed -- exception. Unless a compelling public interest  
21 makes it impossible to comply with a person's directions as  
22 provided in [section 1], the remains of a person must be  
23 disposed of as instructed in an instrument prepared as  
24 provided in [section 1].

25 Section 3. Section 37-19-311, MCA, is amended to read:

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

6 (a) if the applicant or licensee obtained the license  
7 by fraud or misrepresentation, either in the application for  
8 the license or in passing the examination;

9 (b) if the applicant or licensee has violated any  
10 section of this chapter or any rule of the state, district,  
11 or local board of health governing the disposition of dead  
12 human bodies or any rule of the board regulating the  
13 professions of mortuary science or funeral directing or the  
14 operation of a mortuary;

15 (c) if the licensee has participated in any scheme in  
16 the nature of a burial association or burial certificate  
17 plan:

18 (i) which does not properly protect the rights of the  
19 public;

20 (ii) where there is any element of fraud; or

21 (iii) except as provided in [section 1], where there is  
22 contained any agreement or provision that deprives heirs,  
23 next of kin, or any other authorized person freedom of  
24 choice as to the services or merchandise used in connection  
25 with a funeral or the freedom of choice as to which funeral

directors or morticians ~~shall-be~~ are employed; or

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

(2) The board may impose an administrative fine of not more than \$1,000 per incident for any violation that could result in the suspension or revocation of a mortician's or funeral director's license. Any fine collected must be deposited in the state general fund."

**Section 4.** Section 37-19-101, MCA, is amended to read:

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

(1) "Authorizing agent" means a person legally entitled to order the cremation of human remains. An authorizing agent is, in order of preference:

(a) a person who directs, under the provisions of [section 1], that that person's remains be cremated;

(b) a spouse;

(c) a majority of adult children;

(d) a parent;

(e) a close relative of the deceased; or

(f) in the absence of a person or persons listed in subsections (1)(a) through (1)(e), a personal representative, a public administrator, the deceased through a prior authorization, or others as designated by board

rule.

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

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

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

(5) "Funeral directing" includes:

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

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

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

(d) ~~the holding-out representing~~ to the public that one is a funeral director ~~or undertaker~~.

(6) ~~A--"mortician"--is~~ "Mortician" means a person licensed under this chapter to practice mortuary science.

(7) ~~A--"mortuary"--is~~ "Mortuary" means a place of business used for the care and preparation for burial or transportation of dead human bodies or a place where a person represents himself ~~as that the person is~~ engaged in the profession of mortuary science or funeral directing.

(8) "Mortuary science" ~~is~~ means the profession or

1 practice of funeral directing and embalming."

2 NEW SECTION. **Section 5. Coordination instruction.** (1)

3 If Senate Bill No. 45 is not passed and approved, then  
4 [section 4] is void.

5 (2) If Senate Bill No. 45 is passed and approved, then  
6 Senate Bill No. 45 is amended by striking in 37-19-101(1)(e)  
7 the phrase "the deceased through a preneed authorization,".

8 NEW SECTION. **Section 6. Codification instruction.**

9 [Sections 1 and 2] are intended to be codified as an  
10 integral part of Title 72, chapter 37, part 1, and the  
11 provisions of Title 72, chapter 37, part 1, apply to  
12 [sections 1 and 2].

-End-

APPROVED BY COMM. ON BUSINESS  
AND ECONOMIC DEVELOPMENT

HOUSE BILL NO. 509

INTRODUCED BY PAVLOVICH, BARNETT, SIMON, BENEDICT

BY REQUEST OF THE HOUSE COMMITTEE ON

BUSINESS AND ECONOMIC DEVELOPMENT

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A PERSON TO  
GIVE BINDING INSTRUCTIONS THAT THE PERSON'S REMAINS BE  
~~CREMATED-OR~~ DISPOSED OF BY OTHER ANY LAWFUL MEANS; AND  
AMENDING SECTIONS 37-19-101 AND 37-19-311, MCA."

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

NEW SECTION. Section 1. Instructions for disposition  
of person's remains. (1) A person may provide written  
instructions as part of a prearranged funeral plan for  
disposition of the person's remains through-cremation-or  
other BY ANY lawful means. The person shall execute the  
instrument containing the instructions with proof of  
acknowledgment as provided in 1-5-101.

(2) AS USED IN THIS SECTION, "PREARRANGED FUNERAL PLAN"  
MEANS A PLAN:

(A) FOR THE FINAL DISPOSITION OF A PERSON'S REMAINS;

AND

(B) THAT HAS BEEN FUNDED IN ADVANCE OF THE DEATH OF THE  
PERSON LEAVING INSTRUCTIONS FOR THE DISPOSITION OF THAT  
PERSONS'S REMAINS.

NEW SECTION. Section 2. Person's directions to be  
followed -- exception. Unless a compelling public interest  
makes it impossible to comply with a person's directions as  
provided in [section 1], the remains of a person must be  
disposed of as instructed in an instrument prepared as  
provided in [section 1].

Section 3. Section 37-19-311, MCA, is amended to read:

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

(a) if the applicant or licensee obtained the license  
by fraud or misrepresentation, either in the application for  
the license or in passing the examination;

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

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

(i) which does not properly protect the rights of the

1 public;  
 2 (ii) where there is any element of fraud; or  
 3 (iii) except as provided in [section 1], where there is  
 4 contained any agreement or provision that deprives heirs,  
 5 next of kin, or any other authorized person freedom of  
 6 choice as to the services or merchandise used in connection  
 7 with a funeral or the freedom of choice as to which funeral  
 8 directors or morticians ~~shall be~~ are employed; or

9 (d) if the applicant or licensee violates rules adopted  
 10 by the board which define unprofessional conduct on the part  
 11 of applicants and licensees.

12 (2) The board may impose an administrative fine of not  
 13 more than \$1,000 per incident for any violation that could  
 14 result in the suspension or revocation of a mortician's or  
 15 funeral director's license. Any fine collected must be  
 16 deposited in the state general fund."

17 **Section 4.** Section 37-19-101, MCA, is amended to read:

18 "37-19-101. Definitions. Unless the context requires  
 19 otherwise, in this chapter, the following definitions apply:

20 (1) "Authorizing agent" means a person legally entitled  
 21 to order the cremation DISPOSITION of human remains. An  
 22 authorizing agent is, in order of preference:

23 (a) a person who directs, under the provisions of  
 24 [section 1], THE DISPOSITION OF that that person's remains  
 25 be-cremated;

1 (b) a spouse;  
 2 (c) a majority of adult children;  
 3 (d) a parent;  
 4 (e) a close relative of the deceased; or  
 5 (f) in the absence of a person or persons listed in  
 6 subsections (1)(a) through (1)(e), a personal  
 7 representative, a public administrator, the deceased through  
 8 a prior authorization, or others as designated by board  
 9 rule.

10 ~~(1)(2)~~ "Board" means the board of morticians provided  
 11 for in 2-15-1853.

12 ~~(2)(3)~~ "Department" means the department of commerce  
 13 provided for in Title 2, chapter 15, part 18.

14 ~~(3)(4)~~ "Embalming" means the preservation and  
 15 disinfection of the dead human body by application of  
 16 chemicals, externally, internally, or both.

17 ~~(4)(5)~~ "Funeral directing" includes:

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

20 (b) preparing dead bodies for burial, other than by  
 21 embalming;

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

24 (d) ~~the holding-out~~ representing to the public that one  
 25 is a funeral director or undertaker.

1       †5†(6) A--"mortician"--is "Mortician" means a person  
2 licensed under this chapter to practice mortuary science.

3       †6†(7) A--"mortuary"--is "Mortuary" means a place of  
4 business used for the care and preparation for burial or  
5 transportation of dead human bodies or a place where a  
6 person represents himself-as that the person is engaged in  
7 the profession of mortuary science or funeral directing.

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9 practice of funeral directing and embalming."

10       NEW SECTION. Section 5. Coordination instruction. (1)  
11 If Senate Bill No. 45 is not passed and approved, then  
12 [section 4] is void.

13       (2) If Senate Bill No. 45 is passed and approved, then  
14 Senate Bill No. 45 is amended by striking in 37-19-101(1)(e)  
15 the phrase "the deceased through a preneed authorization,".

16       NEW SECTION. Section 6. Codification instruction.  
17 [Sections 1 and 2] are intended to be codified as an  
18 integral part of Title 72, chapter 37, part 1, and the  
19 provisions of Title 72, chapter 37, part 1, apply to  
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(b) if the applicant or licensee has violated any section of this chapter or any rule of the state, district, or local board of health governing the disposition of dead human bodies or any rule of the board regulating the professions of mortuary science or funeral directing or the operation of a mortuary;

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

(i) which does not properly protect the rights of the



1 public;

2 (ii) where there is any element of fraud; or

3 (iii) except as provided in [section 1], where there is

4 contained any agreement or provision that deprives heirs,

5 next of kin, or any other authorized person freedom of

6 choice as to the services or merchandise used in connection

7 with a funeral or the freedom of choice as to which funeral

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10 by the board which define unprofessional conduct on the part

11 of applicants and licensees.

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