

SENATE BILL NO. 45

INTRODUCED BY KEATING  
BY REQUEST OF THE BOARD OF MORTICIANS

IN THE SENATE

DECEMBER 23, 1992	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY.
JANUARY 4, 1993	FIRST READING.
JANUARY 15, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 16, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
JANUARY 18, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 48; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 19, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
	FIRST READING.
JANUARY 28, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
JANUARY 30, 1993	SECOND READING, CONCURRED IN.
FEBRUARY 3, 1993	THIRD READING, CONCURRED IN. AYES, 96; NOES, 3.
FEBRUARY 4, 1993	RETURNED TO SENATE.

IN THE SENATE

FEBRUARY 4, 1993	RECEIVED FROM HOUSE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

## SENATE BILL NO. 45

INTRODUCED BY KEATING

BY REQUEST OF THE BOARD OF MORTICIANS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE LICENSING AND REGULATION OF CREMATORIALS, CREMATORY OPERATORS, AND CREMATORY TECHNICIANS; RENAMING THE BOARD OF MORTICIANS AS THE BOARD OF FUNERAL SERVICE; PROVIDING FOR A CREMATORY EMPLOYEE MEMBER OF THE BOARD; PROVIDING FOR FEES, INSPECTION, AND STANDARDS; PROVIDING FOR RECORDKEEPING; PROVIDING FOR CREMATION PROCEDURES; PROVIDING FOR DISPOSITION OF CREMATED REMAINS; PROVIDING FOR LIMITATION OF LIABILITY; PROVIDING FOR PRENEED CREMATION ARRANGEMENTS; GRANTING RULEMAKING AUTHORITY; REPEALING CREMATORY REGULATION UNDER THE MAUSOLEUM AND COLUMBARIUM AUTHORITIES CHAPTER; AMENDING SECTIONS 2-15-1853, 35-21-102, 35-21-103, 35-21-204, 35-21-207, 35-21-208, 35-21-214, 35-21-216, 35-21-217, 35-21-302, 35-21-303, 35-21-304, 35-21-417, AND 37-19-101, MCA; REPEALING SECTIONS 35-21-504, 35-21-505, AND 35-21-709, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

## STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 4 through 10] grant rulemaking authority to the board of funeral service to implement provisions of this

bill. It is the intent of the legislature that the board, at a minimum, adopt rules:

(1) establishing license application procedures, license fees, criteria for minimum requirements for license eligibility, and requirements for license renewal;

(2) developing procedures for the issuance, renewal, suspension, and revocation of licenses; and

(3) creating disciplinary standards for licensees, establishing investigatory procedures for processing complaints, and adopting ethical standards for licensed crematory operators.

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

NEW SECTION. **Section 1.** Purpose. The legislature finds that because the practice of crematory operation affects the lives of the people of this state and because some Montanans may exercise their right to choose cremation for themselves or a loved one, it is the purpose of [sections 1 and 4 through 10] to:

(1) provide standards for the licensing and regulation of crematorials in order to protect the public health, safety, and welfare; and

(2) ensure the qualified and professional practice of crematory operation.

**Section 2.** Section 2-15-1853, MCA, is amended to read:



1 "2-15-1853. Board of morticians funeral service. (1)  
2 There is a board of morticians funeral service.

3 (2) The board consists of five members appointed by the  
4 governor with the consent of the senate. ~~Four~~ Three members  
5 ~~shall~~ must be licensed morticians. One member ~~shall~~ must be  
6 a representative of the public who is not engaged in the  
7 practice of mortuary science or funeral directing. One  
8 member must be a licensed crematory operator or crematory  
9 technician or a mortician who is engaged in a crematory  
10 operation.

11 (3) Board members shall serve staggered 5-year terms.

12 (4) The board is allocated to the department for  
13 administrative purposes only as prescribed in 2-15-121."

14 **Section 3.** Section 37-19-101, MCA, is amended to read:

15 "37-19-101. Definitions. Unless the context requires  
16 otherwise, in this chapter, the following definitions apply:

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

20 (a) a spouse;

21 (b) an adult child;

22 (c) a parent;

23 (d) a close relative of the deceased; or

24 (e) in the absence of a person listed in subsections

25 (1)(a) through (1)(d), a personal representative, a public

1 administrator, the deceased through a preneed authorization,  
2 or others as designated by board rule.

3 ~~(1)~~ (2) "Board" means the board of morticians funeral  
4 service provided for in 2-15-1853.

5 (3) "Closed container" means a container in which  
6 cremated remains can be placed and enclosed in a manner that  
7 prevents leakage or spillage of cremated remains or entrance  
8 of foreign material.

9 (4) "Cremated remains" means all human remains  
10 recovered after the completion of the cremation, including  
11 pulverization that leaves only bone fragments reduced to  
12 unidentifiable dimensions.

13 (5) "Cremation" means the technical process, using  
14 heat, that reduces human remains to bone fragments. The  
15 reduction takes place through heat and evaporation.

16 (6) "Cremation chamber" means the enclosed space within  
17 which the cremation process takes place. Cremation chambers  
18 of crematoriums licensed by this chapter must be used  
19 exclusively for the cremation of human remains.

20 (7) "Cremation container" means the container in which  
21 the human remains are placed in the cremation chamber for a  
22 cremation. A cremation container must meet substantially all  
23 of the following standards:

24 (a) be composed of readily combustible materials  
25 suitable for cremation;

(b) be able to be closed in order to provide a complete covering for the human remains;

(c) be resistant to leakage and spillage;

(d) be rigid enough for handling with ease; and

(e) be able to provide protection for the health, safety, and integrity of crematory personnel.

(8) "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.

(9) "Crematory operator" means the person in charge of the licensed crematory facility.

(10) "Crematory technician" means an employee of a crematory facility who is trained to perform cremations and is licensed by the board.

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

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

(13) "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.

(14) "Holding facility" means an area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that must:

(a) comply with any applicable public health law;

(b) preserve the dignity of the human remains;

(c) recognize the health, safety, and integrity of the crematory operator and crematory personnel; and

(d) be secure from access by anyone other than authorized personnel.

(15) "Human remains" means the body of a deceased person or part of a body or limb that has been removed from a living person, including the body, part of a body, or limb in any stage of decomposition.

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

(17) 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.

(18) "Mortuary science" is means the profession or practice of funeral directing and embalming.

(19) "Temporary container" means a receptacle for cremated remains that is usually made of cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

(20) "Urn" means a receptacle designed to permanently encase the cremated remains."

**NEW SECTION. Section 4. Licenses required -- display of licenses -- renewal -- penalty for late renewal.** (1) A person doing business in this state or a cemetery, mortuary, corporation, partnership, joint venture, voluntary organization, or other entity that erects, maintains, or provides the necessary appliances and facilities for the cremation of human remains and that conducts cremations must be licensed by the board, beginning July 1, 1993. The license must be displayed in a conspicuous place in the crematory facility.

(2) A crematory license expires on June 30 of each year and may be renewed upon payment of a fee set by the board, which includes the cost of annual inspection. If a crematory facility is attached to a licensed mortuary, only one inspection fee may be charged for inspection of both a mortuary facility under 37-19-403 and a crematory facility.

(3) The board may set a penalty fee for late renewal of a license.

(4) A person in charge of a licensed crematory facility must be licensed as a crematory operator by the board. A person employed by a licensed crematory facility must be licensed as a crematory technician by the board. The license must be displayed in a conspicuous place in the crematory facility.

(5) Crematory operator and crematory technician licenses expire on June 30 of each year and may be renewed upon payment of a fee set by the board. On-the-job training must be provided to a crematory technician at the time of employment.

**NEW SECTION. Section 5. Application -- power of board to set standards -- inspection -- fees.** (1) Application for a crematory, crematory operator, or crematory technician license must be on forms prescribed by the board and must include the name of the applicant, name of the crematory facility, location of the crematory facility and its mailing address, and any further information the board requires. To be eligible for licensure:

(a) as a crematory facility, an application must include a description of the type of structure and equipment to be used in the operation of the crematory facility;

(b) as a crematory operator, an applicant must be at least 18 years of age, must be a high school graduate or have an equivalent degree, and must be of good moral

1 character.

2 (2) The application must be accompanied by an  
3 application fee set by the board.

4 (3) The board must be notified of any change of  
5 ownership of a crematory within 30 days of the change.

6 (4) A license to operate a crematory in Montana may be  
7 issued only upon inspection of the crematory facility and  
8 upon a finding of compliance with standards for operation  
9 set by the board.

10 (5) A temporary permit may be issued to operate a  
11 crematory facility, as prescribed by board rule, that is  
12 effective until the initial inspection is completed to the  
13 board's satisfaction.

14 (6) A crematory facility may be inspected by a board  
15 member or the board's designated representative during  
16 business hours.

17 (7) The board shall adopt rules governing the cremation  
18 of human remains, the transportation of human remains,  
19 sanitation, equipment, fire protection, building  
20 construction, and recordkeeping.

21 (8) A crematory facility shall comply with all local  
22 building codes, environmental standards, and applicable  
23 state and local regulations.

24 (9) A new crematory facility shall pay an initial  
25 inspection fee, set by the board, that must accompany the

1 application.

2 NEW SECTION. **Section 6. Cremation authorization**  
3 **required -- identification.** (1) Except as otherwise provided  
4 in this chapter, a crematory may not cremate human remains  
5 until it has received a cremation authorization.

6 (2) A crematory may not accept unidentified human  
7 remains.

8 (3) Appropriate identification must be placed upon the  
9 exterior of the cremation container upon receipt of the  
10 human remains.

11 NEW SECTION. **Section 7. Cremation procedures --**  
12 **cremation containers.** (1) Human remains may not be cremated  
13 except in a licensed crematory.

14 (2) Human remains may not be cremated within 24 hours  
15 after the time of death.

16 (3) A body may not be cremated with a pacemaker or  
17 other potentially hazardous implant, as defined by the  
18 board, including any toxic or explosive-type sealed  
19 implants, in place. The authorizing agent is responsible for  
20 taking all necessary steps to ensure that any pacemakers or  
21 other hazardous implants are removed prior to cremation.

22 (4) A crematory shall hold human remains, prior to  
23 their cremation, under the following conditions:

24 (a) In the event the crematory is unable to perform  
25 cremation upon receipt of the human remains, it shall place

1 the human remains in a holding facility.

2 (b) If the human remains are not embalmed, they may not  
3 be held longer than 48 hours after the time of death outside  
4 of a refrigerated facility.

5 (5) Human remains delivered to a crematory may not be  
6 removed from the cremation container, and the cremation  
7 container must be cremated with the human remains.

8 (6) Unauthorized persons may not be permitted in the  
9 retort area while any human remains are awaiting cremation,  
10 being cremated, or being removed from the cremation chamber.

11 (7) The unauthorized, simultaneous cremation of human  
12 remains of more than one person within the same cremation  
13 chamber is prohibited unless the crematory has received  
14 express written authorization from all appropriate  
15 authorizing agents for the human remains to be cremated  
16 simultaneously. A written authorization exempts the  
17 crematory from liability for commingling of the product of  
18 the cremation process.

19 (8) The identification of the human remains, as  
20 indicated on the cremation container, must be verified by  
21 the crematory operator or crematory technician immediately  
22 prior to the cremation container being placed within the  
23 cremation chamber. The identification must be removed from  
24 the cremation container and be placed near the cremation  
25 chamber control panel where it must remain until the

1 cremation process is complete.

2 (9) Upon completion of the cremation process, all  
3 recoverable residue must be removed from the cremation  
4 chamber. All residue of the cremation process must be  
5 separated from material other than bone fragments, which  
6 must be processed so as to reduce the bone fragments to  
7 unidentifiable particles.

8 (10) Cremated remains, with proper identification, must  
9 be packed and placed in a temporary container or urn ordered  
10 by the authorizing agent.

11 (11) If the cremated remains will not fit within the  
12 dimensions of the temporary container or urn, the remainder  
13 of the cremated remains must be returned to the authorizing  
14 agent in a separate container.

15 (12) If the cremated remains are to be shipped, the  
16 temporary container or designated receptacle ordered by the  
17 authorizing agent must be packed securely in a suitable,  
18 sturdy, pressure resistant, and properly sealed container.

19 (13) Cremated remains may be shipped only by a method  
20 that has an internal tracing system available and that  
21 provides a receipt signed by the person accepting delivery.

22 NEW SECTION. **Section 8. Disposition of cremated**  
23 **remains.** (1) The person arranging the cremation shall  
24 require the authorizing agent to provide a signed statement  
25 that specifies the ultimate disposition of the cremated

1 remains, if known.

2 (2) The authorizing agent is responsible for  
3 disposition of the cremated remains. If, after a period of  
4 90 days from the date of cremation, the authorizing agent  
5 has not specified the ultimate disposition or claimed the  
6 cremated remains, the crematory or person in possession of  
7 the cremated remains may then dispose of the cremated  
8 remains in any manner permitted by law. A record of the  
9 disposition must be made and kept by the crematory operator.  
10 This subsection applies to all cremated remains in the  
11 possession of a crematory or other party.

12 (3) Except with the express written consent of the  
13 authorizing agent, a person may not:

14 (a) dispose of or scatter cremated remains in a manner  
15 or in a location that commingles the cremated remains with  
16 those of another person. The provisions of this subsection  
17 (3) do not apply to the scattering of cremated remains from  
18 individual containers over public waterways or by air or to  
19 the scattering of cremated remains in an area located in a  
20 dedicated cemetery and used exclusively for that purpose.

21 (b) place cremated remains of more than one person in  
22 the same closed container. This subsection (3) does not  
23 apply to the cremated remains of members of the same family  
24 that are placed in a common closed container designed for  
25 the cremated remains of more than one person.

1 (4) Cremated remains must be delivered to the  
2 individual specified by the authorizing agent on the  
3 cremation authorization form.

4 (5) A representative of the crematory and the  
5 individual receiving the cremated remains shall sign a  
6 receipt indicating the name of the deceased and the date,  
7 time, and place of the delivery. The crematory shall retain  
8 a copy of the receipt, and the original must be given to the  
9 authorizing agent. After this delivery, the cremated remains  
10 may be transported, in this state, without a permit and  
11 disposed of in accordance with this chapter.

12 **NEW SECTION. Section 9. Limitation of liability.** (1) A  
13 person signing a cremation authorization form shall warrant  
14 the truthfulness of any facts set forth in the form,  
15 including the identity of the deceased whose remains are to  
16 be cremated and the signer's authority to order cremation.

17 (2) A crematory, crematory operator, or crematory  
18 technician who cremates human remains or releases or  
19 disposes of cremated remains is not liable for the  
20 cremation, release, or disposition if the crematory,  
21 crematory operator, or crematory technician has received a  
22 signed cremation authorization form from the authorizing  
23 agent.

24 (3) A crematory operator or crematory technician is not  
25 responsible or liable for any valuables delivered to the



crematory with the human remains.

(4) A crematory operator or crematory technician is not liable for refusing to accept a body or perform a cremation:

(a) for any lawful reason;

(b) if the crematory operator or crematory technician has a reasonable basis for questioning any of the representations made by the authorizing agent; or

(c) until receipt of a court order or other suitable confirmation that a dispute has been settled if the crematory operator or crematory technician is aware of any dispute concerning the cremation of the human remains.

(5) If a crematory operator or crematory technician is aware of any dispute concerning the release or disposition of the cremated remains, the crematory operator or crematory technician may refuse to release the cremated remains until the dispute has been resolved or until the crematory operator or crematory technician has been provided with a court order authorizing the release or disposition of the cremated remains. A crematory, crematory operator, or crematory technician is not liable for refusing to release or dispose of cremated remains in accordance with this subsection.

(6) Upon disposing of cremated remains, the person in possession of the cremated remains is discharged from any legal obligation or liability concerning the cremated

remains.

#### NEW SECTION. **Section 10. Preneed cremation**

authorizations. (1) Preneed cremation authorizations may be made with a cemetery, funeral establishment, crematory, or any other party. Preneed authorizations must specify the ultimate disposition of the cremated remains, be signed by the authorizing agent, and meet other requirements established by board rule.

(2) A crematory operator or crematory technician shall comply with the terms of the preneed authorization in releasing or disposing of the cremated remains at the time of death unless additional or conflicting instructions are received from a designated authorizing agent.

(3) Upon payment for cremation and disposition, a crematory, crematory operator, or crematory technician in possession of a cremation authorization form and the deceased's human remains is not liable for the actual cremation and the disposition of the cremated remains if the terms of the preneed authorization have been complied with.

#### **Section 11. Section 35-21-102, MCA, is amended to read:**

"35-21-102. **Definitions.** For the purposes of this chapter, certain words used herein--~~shall~~ in this chapter have the following meanings:

(1) "Columbarium" means a structure, room, or other space in a permanent building or outdoor structure

1 containing that contains niches for permanent inurnment of  
 2 cremated remains, as defined in 37-19-101, in a place used  
 3 or intended to be used and dedicated for interment purposes.  
 4 {2}--"Cremated---remains"---means--human--remains--after  
 5 cremation-in-a-crematory-  
 6 {3}--"Cremation"--means-the-reduction-of-the--body--of--a  
 7 deceased-person-to-cremated-remains-in-a-crematory-  
 8 {4}--"Crematory"---means---a---building---or---structure  
 9 containing--one--or--more--retorts--for--the--reduction--of--bodies  
 10 of-deceased-persons-to-cremated-remains-  
 11 {5}{2} "Crypt" or "vault" means a space in a mausoleum  
 12 of sufficient size used or intended to be used to entomb the  
 13 uncremated human remains.  
 14 {6}{3} "Directors" or "governing body" means the board  
 15 of directors, board of trustees, or other governing body of  
 16 a mausoleum-columbarium authority.  
 17 {7}{4} "Entombment" means the placement of human  
 18 remains in a crypt or vault.  
 19 {8}{5} "Human remains" or "remains" ~~means-the-body-of-a~~  
 20 ~~deceased-person-and--includes--the--body--in--any--stage--of~~  
 21 ~~decomposition--and--cremated--remains~~ has the meaning as  
 22 defined in 37-19-101.  
 23 {9}{6} "Interment" means the disposition of human  
 24 remains by cremation and inurnment or entombment in a place  
 25 used or intended to be used and dedicated for interment

1 purposes.  
 2 {10}{7} "Interment space" means any space in a crypt,  
 3 vault, or niche of sufficient size for the entombment or  
 4 inurnment of the remains of one human being.  
 5 {11}{8} "Inurnment" means placing cremated remains in  
 6 an urn or other permanent container and placing it in a  
 7 niche.  
 8 {12}{9} "Mausoleum" means a permanent building or  
 9 outdoor structure suitable for the entombment of human  
 10 remains in crypts or vaults in a place used or intended to  
 11 be used and dedicated for interment purposes.  
 12 {13}{10} "Mausoleum business", "columbarium business",  
 13 and "mausoleum-columbarium business or purposes" are used  
 14 interchangeably and mean any ~~and-all~~ business and purposes  
 15 requisite to, necessary for, or incident to establishing,  
 16 maintaining, operating, improving, or conducting a  
 17 mausoleum, columbarium, or mausoleum-columbarium; interring  
 18 human remains therein; and the care, preservation, and  
 19 embellishment of such the property.  
 20 {14}{11} "Mausoleum-columbarium" means a building or  
 21 structure containing both a mausoleum and a columbarium.  
 22 {15}{12} "Mausoleum-columbarium authority" means any  
 23 corporation, whether for profit or not for profit, owning,  
 24 controlling, or operating lands, buildings, or structures  
 25 used or intended to be used and dedicated for interment

purposes by entombment or inurnment but ~~shall~~ does not refer to any corporation for profit or not for profit or any association, corporation sole, or other person owning or controlling cemetery lands or property, including mausoleums ~~and/or or~~ columbariums where interment is also made by ground burial.

~~(13)~~ "Niche" means a space in a columbarium or urn garden used or intended to be used for inurnment of cremated human remains.

~~(14)~~ "Plot" or "interment plot" means space in a mausoleum or columbarium used or intended to be used for the interment of human remains. ~~Such~~ The terms include and apply to one or more ~~than-one~~ adjoining crypts or vaults or one or more ~~than-one~~ adjoining niches.

~~(15)~~ "Plot owner", or "owner", or "proprietor" means any person in whose name an interment plot stands of record as owner in the office of a mausoleum-columbarium authority.

~~(16)~~ "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

~~(17)~~ "Urn garden" means a permanent outdoor structure containing niches of stone or reinforced concrete suitable for and used or intended to be used for inurnment of cremated remains in a place used or intended to be used and dedicated for interment purposes. ~~Wherever~~ Whenever the

context ~~shall--permit~~ permits, "urn garden" ~~shall-be-deemed to-be~~ is included in "columbarium".

**Section 12.** Section 35-21-103, MCA, is amended to read:

"35-21-103. Exemptions and limitations on applicability of chapter. (1) The provisions of this chapter relating to private mausoleums and columbariums do not apply to any of the following:

(a) any religious corporation, church, religious society or denomination, corporation sole administering temporalities of any church or religious society or denomination, or any cemetery, mausoleum, or columbarium organized, controlled, and operated by any of them;

(b) any county, town, or city cemetery, mausoleum, or columbarium;

(c) any crematory, crematory operator, or crematory technician licensed under Title 37, chapter 19.

(2) ~~No~~ A condition, or section, or provision of this chapter ~~shall-or may not~~ be so construed or interpreted as to apply to any act or in any way pertain to or affect any Montana mausoleum corporation in existence on July 1, 1949, operating under Montana charter dated prior to the year 1920.

(3) The provisions of this chapter do not affect the corporate existence or rights or powers of any cemetery corporation organized under any law of the state of Montana

1 in which a mausoleum, columbarium, or crematory or  
 2 combination thereof ~~shall-be~~ is situated, maintained, or  
 3 operated in conjunction with a cemetery for the burial of  
 4 dead human remains by ground interment. This chapter and all  
 5 its provisions ~~shall--be~~ are applicable to ~~and--only--to~~  
 6 mausoleums ~~and/or~~ or columbariums owned, operated, or  
 7 controlled by a mausoleum-columbarium authority organized  
 8 and governed as ~~herein~~ provided in this chapter and owning,  
 9 controlling, or operating lands, buildings, or structures,  
 10 etc., solely for the entombment and inurnment of human  
 11 remains."

12 **Section 13.** Section 35-21-204, MCA, is amended to read:

13 "35-21-204. Power to establish and operate ~~mausoleum,~~  
 14 or ~~columbarium,--or--crematory.~~ Any A private corporation  
 15 organized under the laws of the state of Montana and  
 16 authorized by its articles ~~so-to-do~~ may establish, maintain,  
 17 manage, improve, or operate a mausoleum, columbarium, or  
 18 ~~crematory or any-combination--thereof~~ mausoleum-columbarium  
 19 and conduct any ~~or--all~~ of the businesses of a  
 20 mausoleum-columbarium ~~and-crematory~~ either for or without  
 21 profit to its members or stockholders."

22 **Section 14.** Section 35-21-207, MCA, is amended to read:

23 "35-21-207. Rulemaking power. A mausoleum-columbarium  
 24 authority may ~~make,~~ adopt, ~~amend,~~ add-to, ~~revise,~~ or ~~modify~~  
 25 and enforce rules for the use, care, control, management,

1 restriction, and protection of all or any part of its  
 2 mausoleum, or columbarium, ~~--or-crematory~~ and for the other  
 3 purposes specified in 35-21-208 to through 35-21-216,  
 4 inclusive."

5 **Section 15.** Section 35-21-208, MCA, is amended to read:

6 "35-21-208. Power to limit use of property. ~~It~~ A  
 7 mausoleum-columbarium authority may restrict and limit the  
 8 use of all property within its mausoleum, or columbarium, ~~or~~  
 9 crematory."

10 **Section 16.** Section 35-21-214, MCA, is amended to read:

11 "35-21-214. Rules for other purposes. ~~It~~ A  
 12 mausoleum-columbarium authority may make and enforce rules  
 13 for all other purposes ~~deemed~~ considered necessary by the  
 14 mausoleum-columbarium authority for the proper conduct of  
 15 the business of the mausoleum, or columbarium, ~~or-crematory,~~  
 16 for the transfer of any plot or the right of interment, and  
 17 for the protection and safeguarding of the premises and the  
 18 principles, plans, and ideals on which the mausoleum, or  
 19 columbarium, ~~or-crematory~~ is conducted."

20 **Section 17.** Section 35-21-216, MCA, is amended to read:

21 "35-21-216. Person in charge has authority of peace  
 22 officer. The sexton, superintendent, or other person in  
 23 charge of a mausoleum-columbarium and ~~such~~ any other person  
 24 ~~as designated by~~ the mausoleum-columbarium authority  
 25 ~~designates-has~~ have the authority of a peace officer for the

purpose of maintaining order, and enforcing the rules of the mausoleum-columbarium authority, the laws of the state, and the ordinances of the city or county within the mausoleum-columbarium over which he the person has charge and within such the radius ~~as may be~~ necessary to protect the mausoleum-columbarium ~~or-crematory~~ property."

**Section 18.** Section 35-21-217, MCA, is amended to read:

"35-21-217. Power to acquire property. Mausoleum-columbarium authorities may take by purchase, donation, or devise property consisting of lands, mausoleums, ~~crematories~~, and columbariums within which the interment of the dead may be authorized by law."

**Section 19.** Section 35-21-302, MCA, is amended to read:

"35-21-302. Liability of person signing authorization for interment ~~or--cremation~~. Any A person signing any an authorization for the interment ~~or-cremation~~ of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred ~~or-cremated~~, and ~~his~~ the authority to order interments ~~or-cremation~~. He The person signing an authorization is personally liable for all damage occasioned by or resulting from a breach of such the warranty."

**Section 20.** Section 35-21-303, MCA, is amended to read:

"35-21-303. Authorization ~~exempts mausoleum-columbarium~~ from liability. The mausoleum-columbarium authority may

inter ~~or--cremate~~ any remains upon the receipt of a written authorization of a person ~~representing-himself-to-be--a~~ who represents that the person who has acquired the right to control the disposition of the remains. A mausoleum-columbarium authority is not liable for interring ~~or-cremating~~ pursuant to such the authorization unless it has actual notice that such the representation is untrue."

**Section 21.** Section 35-21-304, MCA, is amended to read:

"35-21-304. Limitation on actions against ~~mausoleum-columbarium -- funeral directors, and morticians, and crematory authority~~ exempt from liability. ~~No~~ An action ~~shall may not~~ lie against any mausoleum-columbarium authority relating to the remains of any person ~~which that~~ have been left in its possession for a period of 2 years unless a written contract has been entered into with the mausoleum-columbarium authority for their care or unless permanent interment has been made. ~~Nothing-in-this-section shall-be-construed-as-an-extension-of-the--existing--statute prescribing--the--period-within-which-an-action-based-upon-a tort-must-be-commenced--No~~ A licensed mortician, or funeral director, crematory authority, crematory operator, or crematory technician ~~shall-be~~ is not liable ~~in--damages~~ for any cremated human remains after the remains have been deposited with a mausoleum-columbarium authority in the state of Montana."

1       **Section 22.** Section 35-21-417, MCA, is amended to read:

2       "35-21-417. Commission or rebate for causing  
3 disposition of body in crematory, mausoleum, or columbarium  
4 -- misdemeanor. Every A person who pays, or causes to be  
5 paid, or offers to pay to any other person, firm, or  
6 corporation, directly or indirectly, except as provided in  
7 35-21-416, any commission, or bonus, or rebate, or other  
8 thing of value in consideration of recommending or causing a  
9 dead human body to be disposed of in any crematory,  
10 mausoleum, or columbarium is guilty of a misdemeanor, and  
11 each violation ~~shall--constitute~~ constitutes a separate  
12 offense."

13       NEW SECTION. **Section 23.** Repealer. Sections 35-21-504,  
14 35-21-505, and 35-21-709, MCA, are repealed.

15       NEW SECTION. **Section 24.** Codification instruction.  
16 [Sections 1 and 4 through 10] are intended to be codified as  
17 an integral part of Title 37, chapter 19, and the provisions  
18 of Title 37, chapter 19, apply to [sections 1 and 4 through  
19 10].

20       NEW SECTION. **Section 25.** Effective date. [This act] is  
21 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 SB0045, as introduced.DESCRIPTION OF PROPOSED LEGISLATION:

The bill provides for the licensing and regulation of crematoriums, crematory operators, and crematory technicians; renames the board and provides for a crematory employee on the board; provides for fees, inspection, standards, record keeping, cremation procedures, disposition of cremated remains, limitation of liability and preneed cremation arrangements. Rulemaking authority is granted and crematory regulation under the mausoleum and columbarium authorities is repealed.

ASSUMPTIONS:

1. There are 15 crematory facilities in Montana.
2. There will need to be rule adoptions costing \$200 in the first year.
3. Each crematorium will be inspected once per year.
4. There will be additional costs for board operations.

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
Personal Services	2,924	2,924	0	2,924	2,924	0
Operating Expenses	<u>25,075</u>	<u>27,075</u>	<u>2,000</u>	<u>25,411</u>	<u>27,411</u>	<u>2,000</u>
TOTAL	27,999	29,999	2,000	28,335	30,335	2,000
<u>Revenues:</u> License Fees	27,000	29,000	2,000	27,000	29,000	2,000
<u>Net Impact:</u>	0	(999)	(999)	0	(1,335)	(1,335)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: The public will be protected from fraud in the performance of cremations.

*David Lewis* 1-11-93  
 DAVID LEWIS, BUDGET DIRECTOR DATE  
 Office of Budget and Program Planning

*Thomas Keating* 4/11/93  
 THOMAS KEATING, PRIMARY SPONSOR DATE

Fiscal Note for SB0045, as introduced

513 45

APPROVED BY COMMITTEE  
ON PUBLIC HEALTH, WELFARE  
& SAFETY

SENATE BILL NO. 45

INTRODUCED BY KEATING

BY REQUEST OF THE BOARD OF MORTICIANS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
LICENSING AND REGULATION OF CREMATORIALS, CREMATORY  
OPERATORS, AND CREMATORY TECHNICIANS; RENAMING THE BOARD OF  
MORTICIANS AS THE BOARD OF FUNERAL SERVICE; PROVIDING FOR A  
CREMATORY EMPLOYEE MEMBER OF THE BOARD; PROVIDING FOR FEES,  
INSPECTION, AND STANDARDS; PROVIDING FOR RECORDKEEPING;  
PROVIDING FOR CREMATION PROCEDURES; PROVIDING FOR  
DISPOSITION OF CREMATED REMAINS; PROVIDING FOR LIMITATION OF  
LIABILITY; PROVIDING FOR PRENEED CREMATION ARRANGEMENTS;  
GRANTING RULEMAKING AUTHORITY; REPEALING CREMATORY  
REGULATION UNDER THE MAUSOLEUM AND COLUMBARIUM AUTHORITIES  
CHAPTER; AMENDING SECTIONS 2-15-1853, 35-21-102, 35-21-103,  
35-21-204, 35-21-207, 35-21-208, 35-21-214, 35-21-216,  
35-21-217, 35-21-302, 35-21-303, 35-21-304, 35-21-417, AND  
37-19-101, MCA; REPEALING SECTIONS 35-21-504, 35-21-505, AND  
35-21-709, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because  
[sections 4 through 10] grant rulemaking authority to the  
board of funeral service to implement provisions of this

bill. It is the intent of the legislature that the board, at  
a minimum, adopt rules:

(1) establishing license application procedures,  
license fees, criteria for minimum requirements for license  
eligibility, and requirements for license renewal;

(2) developing procedures for the issuance, renewal,  
suspension, and revocation of licenses; and

(3) creating disciplinary standards for licensees,  
establishing investigatory procedures for processing  
complaints, and adopting ethical standards for licensed  
crematory operators.

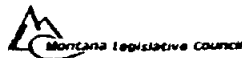
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Purpose. The legislature finds  
that because the practice of crematory operation affects the  
lives of the people of this state and because some Montanans  
may exercise their right to choose cremation for themselves  
or a loved one, it is the purpose of [sections 1 and 4  
through 10] to:

(1) provide standards for the licensing and regulation  
of crematorials in order to protect the public health,  
safety, and welfare; and

(2) ensure the qualified and professional practice of  
crematory operation.

**Section 2.** Section 2-15-1853, MCA, is amended to read:





1       "2-15-1853. Board of morticians funeral service. (1)  
2       There is a board of morticians funeral service.

3       (2) The board consists of five members appointed by the  
4       governor with the consent of the senate. ~~Four~~ Three members  
5       ~~shall~~ must be licensed morticians. One member ~~shall~~ must be  
6       a representative of the public who is not engaged in the  
7       practice of mortuary science or funeral directing. One  
8       member must be a licensed crematory operator or crematory  
9       technician or a mortician who is engaged in a crematory  
10      operation.

11      (3) Board members shall serve staggered 5-year terms.

12      (4) The board is allocated to the department for  
13      administrative purposes only as prescribed in 2-15-121."

14      **Section 3.** Section 37-19-101, MCA, is amended to read:

15      "37-19-101. Definitions. Unless the context requires  
16      otherwise, in this chapter, the following definitions apply:

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

20      (a) a spouse;

21      (b) ~~an adult child~~ A MAJORITY OF ADULT CHILDREN;

22      (c) a parent;

23      (d) a close relative of the deceased; or

24      (e) in the absence of a person OR PERSONS listed in  
25      subsections (1)(a) through (1)(d), a personal

1       representative, a public administrator, the deceased through  
2       a preneed authorization, or others as designated by board  
3       rule.

4       ~~††~~(2) "Board" means the board of morticians funeral  
5       service provided for in 2-15-1853.

6       (3) "Closed container" means a container in which  
7       cremated remains can be placed and enclosed in a manner that  
8       prevents leakage or spillage of cremated remains or entrance  
9       of foreign material.

10      (4) "Cremated remains" means all human remains  
11      recovered after the completion of the cremation, including  
12      pulverization that leaves only bone fragments reduced to  
13      unidentifiable dimensions.

14      (5) "Cremation" means the technical process, using  
15      heat, that reduces human remains to bone fragments. The  
16      reduction takes place through heat and evaporation.

17      (6) "Cremation chamber" means the enclosed space within  
18      which the cremation process takes place. Cremation chambers  
19      of crematoriums licensed by this chapter must be used  
20      exclusively for the cremation of human remains.

21      (7) "Cremation container" means the container in which  
22      the human remains are placed in the cremation chamber for a  
23      cremation. A cremation container must meet substantially all  
24      of the following standards:

25      (a) be composed of readily combustible materials

1 suitable for cremation;

2 (b) be able to be closed in order to provide a complete  
3 covering for the human remains;

4 (c) be resistant to leakage and spillage;

5 (d) be rigid enough for handling with ease; and

6 (e) be able to provide protection for the health,  
7 safety, and integrity of crematory personnel.

8 (8) "Crematory" means the building or portion of a  
9 building that houses the cremation chamber and the holding  
10 facility.

11 (9) "Crematory operator" means the person in charge of  
12 the licensed crematory facility.

13 (10) "Crematory technician" means an employee of a  
14 crematory facility who is trained to perform cremations and  
15 is licensed by the board.

16 †2†(11) "Department" means the department of commerce  
17 provided for in Title 2, chapter 15, part 18.

18 †3†(12) "Embalming" means the preservation and  
19 disinfection of the dead human body by application of  
20 chemicals, externally, internally, or both.

21 †4†(13) "Funeral directing" includes:

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

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

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

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

5 (14) "Holding facility" means an area within or adjacent  
6 to the crematory facility designated for the retention of  
7 human remains prior to cremation that must:

8 (a) comply with any applicable public health law;

9 (b) preserve the dignity of the human remains;

10 (c) recognize the health, safety, and integrity of the  
11 crematory operator and crematory personnel; and

12 (d) be secure from access by anyone other than  
13 authorized personnel.

14 (15) "Human remains" means the body of a deceased person  
15 or part of a body or limb that has been removed from a  
16 living person, including the body, part of a body, or limb  
17 in any stage of decomposition.

18 †5†(16) A--"mortician"--is "Mortician" means a person  
19 licensed under this chapter to practice mortuary science.

20 †6†(17) A--"mortuary"--is "Mortuary" means a place of  
21 business used for the care and preparation for burial or  
22 transportation of dead human bodies or a place where a  
23 person represents himself-as that the person is engaged in  
24 the profession of mortuary science or funeral directing.

25 †7†(18) "Mortuary science" is means the profession or

1 practice of funeral directing and embalming.

2 (19) "Temporary container" means a receptacle for  
3 cremated remains that is usually made of cardboard, plastic  
4 film, or similar material designed to hold the cremated  
5 remains until an urn or other permanent container is  
6 acquired.

7 (20) "Urn" means a receptacle designed to permanently  
8 encase the cremated remains."

9 **NEW SECTION. Section 4. Licenses required -- display**  
10 **of licenses -- renewal -- penalty for late renewal. (1) A**  
11 **person doing business in this state or a cemetery, mortuary,**  
12 **corporation, partnership, joint venture, voluntary**  
13 **organization, or other entity that erects, maintains, or**  
14 **provides the necessary appliances and facilities for the**  
15 **cremation of human remains and that conducts cremations must**  
16 **be licensed by the board, beginning July 1, 1993. The**  
17 **license must be displayed in a conspicuous place in the**  
18 **crematory facility.**

19 (2) A crematory license expires on June 30 of each year  
20 and may be renewed upon payment of a fee set by the board,  
21 which includes the cost of annual inspection. If a crematory  
22 facility is attached to a licensed mortuary, only one  
23 inspection fee may be charged for inspection of both a  
24 mortuary facility under 37-19-403 and a crematory facility.

25 (3) The board may set a penalty fee for late renewal of

1 a license.

2 (4) A person in charge of a licensed crematory facility  
3 must be licensed as a crematory operator by the board. A  
4 person employed by a licensed crematory facility must be  
5 licensed as a crematory technician by the board. The license  
6 must be displayed in a conspicuous place in the crematory  
7 facility.

8 (5) Crematory operator and crematory technician  
9 licenses expire on June 30 of each year and may be renewed  
10 upon payment of a fee set by the board. On-the-job training  
11 must be provided to a crematory technician at the time of  
12 employment.

13 **NEW SECTION. Section 5. Application -- power of board**  
14 **to set standards -- inspection -- fees. (1) Application for**  
15 **a crematory, crematory operator, or crematory technician**  
16 **license must be on forms prescribed by the board and must**  
17 **include the name of the applicant, name of the crematory**  
18 **facility, location of the crematory facility and its mailing**  
19 **address, and any further information the board requires. To**  
20 **be eligible for licensure:**

21 (a) as a crematory facility, an application must  
22 include a description of the type of structure and equipment  
23 to be used in the operation of the crematory facility;

24 (b) as a crematory operator, an applicant must be at  
25 least 18 years of age, must be a high school graduate or

1 have an equivalent degree, and must be of good moral  
2 character.

3 (2) The application must be accompanied by an  
4 application fee set by the board.

5 (3) The board must be notified of any change of  
6 ownership of a crematory within 30 days of the change.

7 (4) A license to operate a crematory in Montana may be  
8 issued only upon inspection of the crematory facility and  
9 upon a finding of compliance with standards for operation  
10 set by the board.

11 (5) A temporary permit may be issued to operate a  
12 crematory facility, as prescribed by board rule, that is  
13 effective until the initial inspection is completed to the  
14 board's satisfaction.

15 (6) A crematory facility may be inspected by a board  
16 member or the board's designated representative during  
17 business hours.

18 (7) The board shall adopt rules governing the cremation  
19 of human remains, the transportation of human remains,  
20 sanitation, equipment, fire protection, building  
21 construction, and recordkeeping.

22 (8) A crematory facility shall comply with all local  
23 building codes, environmental standards, and applicable  
24 state and local regulations.

25 (9) A new crematory facility shall pay an initial

1 inspection fee, set by the board, that must accompany the  
2 application.

3 NEW SECTION. Section 6. Cremation authorization  
4 required -- identification. (1) Except as otherwise provided  
5 in this chapter, a crematory may not cremate human remains  
6 until it has received a cremation authorization.

7 (2) A crematory may not accept unidentified human  
8 remains.

9 (3) Appropriate identification must be placed upon the  
10 exterior of the cremation container upon receipt of the  
11 human remains.

12 NEW SECTION. Section 7. Cremation procedures --  
13 cremation containers. (1) Human remains may not be cremated  
14 except in a licensed crematory.

15 (2) Human remains may not be cremated within 24 hours  
16 after the time of death.

17 (3) A body may not be cremated with a pacemaker or  
18 other potentially hazardous implant, as defined by the  
19 board, including any toxic or explosive-type sealed  
20 implants, in place. The authorizing agent is responsible for  
21 ~~taking--all--necessary--steps--to--ensure--that~~ DISCLOSING THE  
22 EXISTENCE OF any pacemakers or other hazardous implants are  
23 ~~removed--prior--to--cremation.~~

24 (4) A crematory shall hold human remains, prior to  
25 their cremation, under the following conditions:

(a) In the event the crematory is unable to perform cremation upon receipt of the human remains, it shall place the human remains in a holding facility.

(b) If the human remains are not embalmed, they may not be held longer than 48 hours after the time of death outside of a refrigerated facility.

(5) Human remains delivered to a crematory may not be removed from the cremation container, and the cremation container must be cremated with the human remains.

(6) Unauthorized persons may not be permitted in the retort area while any human remains are awaiting cremation, being cremated, or being removed from the cremation chamber.

(7) The unauthorized, simultaneous cremation of human remains of more than one person within the same cremation chamber is prohibited unless the crematory has received express written authorization from all appropriate authorizing agents for the human remains to be cremated simultaneously. A written authorization exempts the crematory from liability for commingling of the product of the cremation process PROVIDED THE AUTHORIZATION IS COMPLIED WITH.

(8) The identification of the human remains, as indicated on the cremation container, must be verified by the crematory operator or crematory technician immediately prior to the cremation container being placed within the

cremation chamber. The identification must be removed from the cremation container and be placed near the cremation chamber control panel where it must remain until the cremation process is complete.

(9) Upon completion of the cremation process, all recoverable residue must be removed from the cremation chamber. All residue of the cremation process must be separated from material other than bone fragments, which must be processed so as to reduce the bone fragments to unidentifiable particles.

(10) Cremated remains, with proper identification, must be packed and placed in a temporary container or urn ordered by the authorizing agent.

(11) If the cremated remains will not fit within the dimensions of the temporary container or urn, the remainder of the cremated remains must be returned to the authorizing agent in a separate container.

(12) If the cremated remains are to be shipped, the temporary container or designated receptacle ordered by the authorizing agent must be packed securely in a suitable, sturdy, pressure resistant, and properly sealed container.

(13) Cremated remains may be shipped only by a method that has an internal tracing system available and that provides a receipt signed by the person accepting delivery.

NEW SECTION. Section 8. Disposition of cremated

remains. (1) The person arranging the cremation shall require the authorizing agent to provide a signed statement that specifies the ultimate disposition of the cremated remains, if known.

(2) The authorizing agent is responsible for SPECIFYING THE disposition of the cremated remains. If, after a period of 90 days from the date of cremation, the authorizing agent has not specified the ultimate disposition or claimed the cremated remains, the crematory or person in possession of the cremated remains IS RESPONSIBLE FOR DISPOSITION OF THE CREMATED REMAINS AND may then dispose of the cremated remains in any manner permitted by law. A record of the disposition must be made and kept by the crematory operator. This subsection applies to all cremated remains in the possession of a crematory or other party.

(3) Except with the express written consent of the authorizing agent, a person may not:

(a) dispose of or scatter cremated remains in a manner or in a location that commingles the cremated remains with those of another person. The provisions of this subsection (3) do not apply to the scattering of cremated remains from individual containers over public waterways or by air or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for that purpose.

(b) place cremated remains of more than one person in

~~the same closed container. This--subsection--(3)--does--not apply--to--the--cremated--remains--of--members--of--the--same--family that--are--placed--in--a--common--closed--container--designed--for the--cremated--remains--of--more--than--one--person--~~

(4) Cremated remains must be delivered to the individual specified by the authorizing agent on the cremation authorization form.

(5) A representative of the crematory and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased and the date, time, and place of the delivery. The crematory shall retain a copy of the receipt, and the original must be given to the authorizing agent. After this delivery, the cremated remains may be transported, in this state, without a permit and disposed of in accordance with this chapter.

NEW SECTION. **Section 9. Limitation of liability.** (1) A person signing a cremation authorization form shall warrant the truthfulness of any facts set forth in the form, including the identity of the deceased whose remains are to be cremated and the signer's authority to order cremation.

~~(2)--A--crematory,--crematory--operator,--or--crematory technician--who--cremates--human--remains--or--releases--or disposes--of--cremated--remains--is--not--liable--for--the cremation,--release,--or--disposition--if--the--crematory, crematory--operator,--or--crematory--technician--has--received--a~~

1 signed--cremation--authorization--form--from-the-authorizing  
 2 agent;  
 3 {3}--A-crematory-operator-or-crematory-technician-is-not  
 4 responsible-or-liaible-for-any--valuables--delivered--to--the  
 5 crematory-with-the-human-remains;  
 6 {4}--A-crematory-operator-or-crematory-technician-is-not  
 7 liaible-for-refusing-to-accept-a-body-or-perform-a-cremation;  
 8 {a)--for-any-lawful-reason;  
 9 {b)--if--the--crematory-operator-or-crematory-technician  
 10 has--a--reasonable--basis--for--questioning--any--of--the  
 11 representations-made-by-the-authorizing-agent;-or  
 12 {c)--until--receipt--of--a-court-order-or-other-suitable  
 13 confirmation--that--a--dispute--has--been--settled--if--the  
 14 crematory--operator--or-crematory-technician-is-aware-of-any  
 15 dispute-concerning-the-cremation-of-the-human-remains;  
 16 {5}--If-a-crematory-operator-or-crematory-technician--is  
 17 aware--of--any-dispute-concerning-the-release-or-disposition  
 18 of-the-cremated-remains;-the-crematory-operator-or-crematory  
 19 technician-may-refuse-to-release-the-cremated-remains--until  
 20 the--dispute--has--been--resolved--or--until--the--crematory  
 21 operator--or--crematory--technician-has-been-provided-with-a  
 22 court-order-authorizing-the-release-or-disposition--of--the  
 23 cremated--remains--A-crematory;-crematory-operator;-or  
 24 crematory-technician-is-not-liaible-for-refusing--to--release  
 25 or--dispose--of--cremated--remains--in--accordance-with-this

1 subsection;  
 2 {6}--Upon-disposing-of-cremated-remains;-the--person--in  
 3 possession--of--the--cremated-remains-is-discharged-from-any  
 4 legal--obligation--or--liabiility--concerning--the--cremated  
 5 remains;  
 6 {2} A CREMATORY, CREMATORY OPERATOR, OR CREMATORY  
 7 TECHNICIAN WHO PROPERLY CREMATES HUMAN REMAINS, REFUSES TO  
 8 ACCEPT A BODY OR PERFORM A CREMATION, OR REFUSES TO RELEASE  
 9 CREMATED REMAINS DUE TO AN UNRESOLVED DISPUTE IS PRESUMED TO  
 10 HAVE ACTED PROPERLY AND WITHOUT NEGLIGENCE IF THE ACTIONS  
 11 WERE PERFORMED IN ACCORDANCE WITH TITLE 37, CHAPTER 19.  
 12 NEW SECTION. Section 10. Preneed cremation  
 13 authorizations. (1) Preneed cremation authorizations may be  
 14 made with a cemetery, funeral establishment, crematory, or  
 15 any other party. Preneed authorizations must specify the  
 16 ultimate disposition of the cremated remains, be signed by  
 17 the authorizing agent, and meet other requirements  
 18 established by board rule.  
 19 (2) A crematory operator or crematory technician shall  
 20 comply with the terms of the preneed authorization in  
 21 releasing or disposing of the cremated remains at the time  
 22 of death unless-additional-or-conflicting-instructions-are  
 23 received-from-a-designated-authorizing-agent.  
 24 (3) Upon payment for cremation and disposition, a  
 25 crematory, crematory operator, or crematory technician in

possession of a cremation authorization form and the deceased's human remains is not liable for the actual cremation and the disposition of the cremated remains if the terms of the preneed authorization have been complied with.

**Section 11.** Section 35-21-102, MCA, is amended to read:

"35-21-102. Definitions. For the purposes of this chapter, certain words used herein--shall in this chapter have the following meanings:

(1) "Columbarium" means a structure, room, or other space in a permanent building or outdoor structure containing that contains niches for permanent inurnment of cremated remains, as defined in 37-19-101, in a place used or intended to be used and dedicated for interment purposes.

~~{2}--"Cremated---remains"---means--human--remains--after cremation-in-a-crematory-~~

~~{3}--"Cremation"--means-the-reduction-of-the--body--of--a deceased-person-to-cremated-remains-in-a-crematory-~~

~~{4}--"Crematory"---means---a---building---or---structure containing--one--or--more--retorts--for--the--reduction--of--bodies of-deceased-persons-to-cremated-remains-~~

~~{5}{2}~~ "Crypt" or "vault" means a space in a mausoleum of sufficient size used or intended to be used to entomb the uncremated human remains.

~~{6}{3}~~ "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of

a mausoleum-columbarium authority.

~~{7}{4}~~ "Entombment" means the placement of human remains in a crypt or vault.

~~{8}{5}~~ "Human remains" or "remains" ~~means-the-body-of-a deceased-person-and--includes--the--body--in--any--stage--of decomposition--and--cremated--remains~~ has the meaning as defined in 37-19-101.

~~{9}{6}~~ "Interment" means the disposition of human remains by cremation and inurnment or entombment in a place used or intended to be used and dedicated for interment purposes.

~~{10}{7}~~ "Interment space" means any space in a crypt, vault, or niche of sufficient size for the entombment or inurnment of the remains of one human being.

~~{11}{8}~~ "Inurnment" means placing cremated remains in an urn or other permanent container and placing it in a niche.

~~{12}{9}~~ "Mausoleum" means a permanent building or outdoor structure suitable for the entombment of human remains in crypts or vaults in a place used or intended to be used and dedicated for interment purposes.

~~{13}{10}~~ "Mausoleum business", "columbarium business", and "mausoleum-columbarium business or purposes" are used interchangeably and mean any ~~and-all~~ business and purposes requisite to, necessary for, or incident to establishing,



maintaining, operating, improving, or conducting a mausoleum, columbarium, or mausoleum-columbarium; interring human remains therein; and the care, preservation, and embellishment of such the property.

{14}{11} "Mausoleum-columbarium" means a building or structure containing both a mausoleum and a columbarium.

{15}{12} "Mausoleum-columbarium authority" means any corporation, whether for profit or not for profit, owning, controlling, or operating lands, buildings, or structures used or intended to be used and dedicated for interment purposes by entombment or inurnment but ~~shall~~ does not refer to any corporation for profit or not for profit or any association, corporation sole, or other person owning or controlling cemetery lands or property, including mausoleums ~~and/or or~~ columbariums where interment is also made by ground burial.

{16}{13} "Niche" means a space in a columbarium or urn garden used or intended to be used for inurnment of cremated human remains.

{17}{14} "Plot" or "interment plot" means space in a mausoleum or columbarium used or intended to be used for the interment of human remains. ~~Such~~ The terms include and apply to one or more ~~than-one~~ adjoining crypts or vaults or one or more ~~than-one~~ adjoining niches.

{18}{15} "Plot owner", or "owner", or "proprietor" means

any person in whose name an interment plot stands of record as owner in the office of a mausoleum-columbarium authority.

{19}{16} "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

{20}{17} "Urn garden" means a permanent outdoor structure containing niches of stone or reinforced concrete suitable for and used or intended to be used for inurnment of cremated remains in a place used or intended to be used and dedicated for interment purposes. ~~Wherever Whenever~~ the context ~~shall--permit~~ permits, "urn garden" ~~shall-be-deemed to-be is~~ included in "columbarium".

**Section 12.** Section 35-21-103, MCA, is amended to read:

"35-21-103. **Exemptions and limitations on applicability of chapter.** (1) The provisions of this chapter relating to private mausoleums and columbariums do not apply to any of the following:

(a) any religious corporation, church, religious society or denomination, corporation sole administering temporalities of any church or religious society or denomination, or any cemetery, mausoleum, or columbarium organized, controlled, and operated by any of them;

(b) any county, town, or city cemetery, mausoleum, or columbarium;

(c) any crematory, crematory operator, or crematory

1 technician licensed under Title 37, chapter 19.

2 (2) No A condition, or section, or provision of this  
3 chapter ~~shall-or~~ may not be so construed or interpreted as  
4 to apply to any act or in any way pertain to or affect any  
5 Montana mausoleum corporation in existence on July 1, 1949,  
6 operating under Montana charter dated prior to the year  
7 1920.

8 (3) The provisions of this chapter do not affect the  
9 corporate existence or rights or powers of any cemetery  
10 corporation organized under any law of the state of Montana  
11 in which a mausoleum, columbarium, or crematory or  
12 combination thereof ~~shall-be~~ is situated, maintained, or  
13 operated in conjunction with a cemetery for the burial of  
14 dead human remains by ground interment. This chapter and all  
15 its provisions ~~shall--be~~ are applicable to ~~and--only--to~~  
16 mausoleums ~~and/or~~ or columbariums owned, operated, or  
17 controlled by a mausoleum-columbarium authority organized  
18 and governed as herein provided in this chapter and owning,  
19 controlling, or operating lands, buildings, or structures,  
20 ~~etc.,~~ solely for the entombment and inurnment of human  
21 remains."

22 **Section 13.** Section 35-21-204, MCA, is amended to read:

23 "35-21-204. Power to establish and operate ~~mausoleum,~~  
24 or columbarium, ~~--or--crematory.~~ Any A private corporation  
25 organized under the laws of the state of Montana and

1 authorized by its articles ~~so-to-do~~ may establish, maintain,  
2 manage, improve, or operate a mausoleum, columbarium, ~~or~~  
3 ~~crematory or any-combination--thereof~~ mausoleum-columbarium  
4 and conduct any ~~or--all~~ of the businesses of a  
5 mausoleum-columbarium ~~and-crematory~~ either for or without  
6 profit to its members or stockholders."

7 **Section 14.** Section 35-21-207, MCA, is amended to read:

8 "35-21-207. **Rulemaking power.** A mausoleum-columbarium  
9 authority may ~~make,~~ adopt, ~~amend,~~ add-to, ~~revise,~~ or ~~modify~~  
10 and enforce rules for the use, care, control, management,  
11 restriction, and protection of all or any part of its  
12 ~~mausoleum,~~ or columbarium, ~~--or--crematory~~ and for the other  
13 purposes specified in 35-21-208 ~~to~~ through 35-21-216,  
14 ~~inclusive."~~

15 **Section 15.** Section 35-21-208, MCA, is amended to read:

16 "35-21-208. **Power to limit use of property.** ~~It~~ A  
17 mausoleum-columbarium authority may restrict and limit the  
18 use of all property within its ~~mausoleum,~~ or columbarium, ~~or~~  
19 ~~crematory."~~

20 **Section 16.** Section 35-21-214, MCA, is amended to read:

21 "35-21-214. **Rules for other purposes.** ~~It~~ A  
22 mausoleum-columbarium authority may make and enforce rules  
23 for all other purposes ~~deemed~~ considered necessary by the  
24 mausoleum-columbarium authority for the proper conduct of  
25 the business of the ~~mausoleum,~~ or columbarium, ~~or--crematory,~~

for the transfer of any plot or the right of interment, and for the protection and safeguarding of the premises and the principles, plans, and ideals on which the mausoleum, or columbarium, or crematory is conducted."

**Section 17.** Section 35-21-216, MCA, is amended to read:

"35-21-216. Person in charge has authority of peace officer. The sexton, superintendent, or other person in charge of a mausoleum-columbarium and such any other person as designated by the mausoleum-columbarium authority designates-has have the authority of a peace officer for the purpose of maintaining order, and enforcing the rules of the mausoleum-columbarium authority, the laws of the state, and the ordinances of the city or county within the mausoleum-columbarium over which he the person has charge and within such the radius as-may-be necessary to protect the mausoleum-columbarium or-crematory property."

**Section 18.** Section 35-21-217, MCA, is amended to read:

"35-21-217. Power to acquire property. Mausoleum-columbarium authorities may take by purchase, donation, or devise property consisting of lands, mausoleums, crematories, and columbariums within which the interment of the dead may be authorized by law."

**Section 19.** Section 35-21-302, MCA, is amended to read:

"35-21-302. Liability of person signing authorization for interment or--cremation. Any A person signing any an

authorization for the interment or-cremation of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred or-cremated, and his the authority to order interments or-cremation. He The person signing an authorization is personally liable for all damage occasioned by or resulting from a breach of such the warranty."

**Section 20.** Section 35-21-303, MCA, is amended to read:

"35-21-303. Authorization exempts mausoleum-columbarium from liability. The mausoleum-columbarium authority may inter or--cremate any remains upon the receipt of a written authorization of a person representing-himself-to-be--a who represents that the person who has acquired the right to control the disposition of the remains. A mausoleum-columbarium authority is not liable for interring or-cremating pursuant to such the authorization unless it has actual notice that such the representation is untrue."

**Section 21.** Section 35-21-304, MCA, is amended to read:

"35-21-304. Limitation on actions against mausoleum-columbarium -- funeral directors, and morticians, and crematory authority exempt from liability. No An action shall may not lie against any mausoleum-columbarium authority relating to the remains of any person which that have been left in its possession for a period of 2 years unless a written contract has been entered into with the

1   mausoleum-columbarium authority for their care or unless  
 2   permanent interment has been made. ~~Nothing-in-this-section~~  
 3   ~~shall-be-constructed-as-an-extension-of-the-existing-statute~~  
 4   ~~prescribing-the-period-within-which-an-action-based-upon-a~~  
 5   ~~tort-must-be-commenced--No~~ A licensed mortician, or funeral  
 6   director, crematory authority, crematory operator, or  
 7   crematory technician shall-be is not liable in--damages for  
 8   any cremated human remains after the remains have been  
 9   deposited with a mausoleum-columbarium authority in the  
 10   state of Montana."

11       **Section 22.** Section 35-21-417, MCA, is amended to read:

12       "35-21-417. Commission or rebate for causing  
 13   disposition of body in crematory, ~~mausoleum,~~ or columbarium  
 14   -- ~~misdemeanor.~~ Every A person who pays, or causes to be  
 15   paid, or offers to pay to any other person, firm, or  
 16   corporation, directly or indirectly, except as provided in  
 17   35-21-416, any commission, or bonus, or rebate, or other  
 18   thing of value in consideration of recommending or causing a  
 19   dead human body to be disposed of in any crematory,  
 20   ~~mausoleum,~~ or columbarium is guilty of a misdemeanor, and  
 21   each violation ~~shall-constitute~~ constitutes a separate  
 22   offense."

23       NEW SECTION. **Section 23.** Repealer. Sections 35-21-504,  
 24   35-21-505, and 35-21-709, MCA, are repealed.

25       NEW SECTION. **Section 24.** Codification instruction.

1   [Sections 1 and 4 through 10] are intended to be codified as  
 2   an integral part of Title 37, chapter 19, and the provisions  
 3   of Title 37, chapter 19, apply to [sections 1 and 4 through  
 4   10].

5       NEW SECTION. **Section 25.** Effective date. [This act] is  
 6   effective on passage and approval.

-End-

## 1 SENATE BILL NO. 45

## 2 INTRODUCED BY KEATING

## 3 BY REQUEST OF THE BOARD OF MORTICIANS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
6 LICENSING AND REGULATION OF CREMATORIIUMS, CREMATORY  
7 OPERATORS, AND CREMATORY TECHNICIANS; RENAMING THE BOARD OF  
8 MORTICIANS AS THE BOARD OF FUNERAL SERVICE; PROVIDING FOR A  
9 CREMATORY EMPLOYEE MEMBER OF THE BOARD; PROVIDING FOR FEES,  
10 INSPECTION, AND STANDARDS; PROVIDING FOR RECORDKEEPING;  
11 PROVIDING FOR CREMATION PROCEDURES; PROVIDING FOR  
12 DISPOSITION OF CREMATED REMAINS; PROVIDING FOR LIMITATION OF  
13 LIABILITY; PROVIDING FOR PRENEED CREMATION ARRANGEMENTS;  
14 GRANTING RULEMAKING AUTHORITY; REPEALING CREMATORY  
15 REGULATION UNDER THE MAUSOLEUM AND COLUMBARIUM AUTHORITIES  
16 CHAPTER; AMENDING SECTIONS 2-15-1853, 35-21-102, 35-21-103,  
17 35-21-204, 35-21-207, 35-21-208, 35-21-214, 35-21-216,  
18 35-21-217, 35-21-302, 35-21-303, 35-21-304, 35-21-417, AND  
19 37-19-101, MCA; REPEALING SECTIONS 35-21-504, 35-21-505, AND  
20 35-21-709, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

21  
22 STATEMENT OF INTENT

23 A statement of intent is required for this bill because  
24 [sections 4 through 10] grant rulemaking authority to the  
25 board of funeral service to implement provisions of this

1 bill. It is the intent of the legislature that the board, at  
2 a minimum, adopt rules:

3 (1) establishing license application procedures,  
4 license fees, criteria for minimum requirements for license  
5 eligibility, and requirements for license renewal;

6 (2) developing procedures for the issuance, renewal,  
7 suspension, and revocation of licenses; and

8 (3) creating disciplinary standards for licensees,  
9 establishing investigatory procedures for processing  
10 complaints, and adopting ethical standards for licensed  
11 crematory operators.

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 NEW SECTION. Section 1. Purpose. The legislature finds  
15 that because the practice of crematory operation affects the  
16 lives of the people of this state and because some Montanans  
17 may exercise their right to choose cremation for themselves  
18 or a loved one, it is the purpose of [sections 1 and 4  
19 through 10] to:

20 (1) provide standards for the licensing and regulation  
21 of crematoriums in order to protect the public health,  
22 safety, and welfare; and

23 (2) ensure the qualified and professional practice of  
24 crematory operation.

25 Section 2. Section 2-15-1853, MCA, is amended to read:



1 "2-15-1853. Board of morticians funeral service. (1)  
2 There is a board of morticians funeral service.

3 (2) The board consists of five members appointed by the  
4 governor with the consent of the senate. ~~Four~~ Three members  
5 ~~shall~~ must be licensed morticians. One member ~~shall~~ must be  
6 a representative of the public who is not engaged in the  
7 practice of mortuary science or funeral directing. One  
8 member must be a licensed crematory operator or crematory  
9 technician or a mortician who is engaged in a crematory  
10 operation.

11 (3) Board members shall serve staggered 5-year terms.

12 (4) The board is allocated to the department for  
13 administrative purposes only as prescribed in 2-15-121."

14 **Section 3.** Section 37-19-101, MCA, is amended to read:

15 "37-19-101. Definitions. Unless the context requires  
16 otherwise, in this chapter, the following definitions apply:

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

20 (a) a spouse;

21 (b) ~~an adult child~~ A MAJORITY OF ADULT CHILDREN;

22 (c) a parent;

23 (d) a close relative of the deceased; or

24 (e) in the absence of a person OR PERSONS listed in  
25 subsections (1)(a) through (1)(d), a personal

1 representative, a public administrator, the deceased through  
2 a preneed authorization, or others as designated by board  
3 rule.

4 ~~††~~ (2) "Board" means the board of morticians funeral  
5 service provided for in 2-15-1853.

6 (3) "Closed container" means a container in which  
7 cremated remains can be placed and enclosed in a manner that  
8 prevents leakage or spillage of cremated remains or entrance  
9 of foreign material.

10 (4) "Cremated remains" means all human remains  
11 recovered after the completion of the cremation, including  
12 pulverization that leaves only bone fragments reduced to  
13 unidentifiable dimensions.

14 (5) "Cremation" means the technical process, using  
15 heat, that reduces human remains to bone fragments. The  
16 reduction takes place through heat and evaporation.

17 (6) "Cremation chamber" means the enclosed space within  
18 which the cremation process takes place. Cremation chambers  
19 of crematoriums licensed by this chapter must be used  
20 exclusively for the cremation of human remains.

21 (7) "Cremation container" means the container in which  
22 the human remains are placed in the cremation chamber for a  
23 cremation. A cremation container must meet substantially all  
24 of the following standards:

25 (a) be composed of readily combustible materials

1 suitable for cremation;  
 2 (b) be able to be closed in order to provide a complete  
 3 covering for the human remains;  
 4 (c) be resistant to leakage and spillage;  
 5 (d) be rigid enough for handling with ease; and  
 6 (e) be able to provide protection for the health,  
 7 safety, and integrity of crematory personnel.  
 8 (8) "Crematory" means the building or portion of a  
 9 building that houses the cremation chamber and the holding  
 10 facility.  
 11 (9) "Crematory operator" means the person in charge of  
 12 the licensed crematory facility.  
 13 (10) "Crematory technician" means an employee of a  
 14 crematory facility who is trained to perform cremations and  
 15 is licensed by the board.  
 16 {2}{11} "Department" means the department of commerce  
 17 provided for in Title 2, chapter 15, part 18.  
 18 {3}{12} "Embalming" means the preservation and  
 19 disinfection of the dead human body by application of  
 20 chemicals, externally, internally, or both.  
 21 {4}{13} "Funeral directing" includes:  
 22 (a) supervising funerals, including the making of  
 23 preneed or at-need contractual arrangements for funerals;  
 24 (b) preparing dead bodies for burial, other than by  
 25 embalming;

1 (c) maintaining a mortuary for the preparation,  
 2 disposition, or care of dead human bodies; and  
 3 (d) the-holding-out representing to the public that one  
 4 is a funeral director or-undertaker.  
 5 (14) "Holding facility" means an area within or adjacent  
 6 to the crematory facility designated for the retention of  
 7 human remains prior to cremation that must:  
 8 (a) comply with any applicable public health law;  
 9 (b) preserve the dignity of the human remains;  
 10 (c) recognize the health, safety, and integrity of the  
 11 crematory operator and crematory personnel; and  
 12 (d) be secure from access by anyone other than  
 13 authorized personnel.  
 14 (15) "Human remains" means the body of a deceased person  
 15 or part of a body or limb that has been removed from a  
 16 living person, including the body, part of a body, or limb  
 17 in any stage of decomposition.  
 18 {5}{16} A--"mortician"--is "Mortician" means a person  
 19 licensed under this chapter to practice mortuary science.  
 20 {6}{17} A--"mortuary"--is "Mortuary" means a place of  
 21 business used for the care and preparation for burial or  
 22 transportation of dead human bodies or a place where a  
 23 person represents himself-as that the person is engaged in  
 24 the profession of mortuary science or funeral directing.  
 25 {7}{18} "Mortuary science" is means the profession or

practice of funeral directing and embalming.

(19) "Temporary container" means a receptacle for cremated remains that is usually made of cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

(20) "Urn" means a receptacle designed to permanently encase the cremated remains."

**NEW SECTION. Section 4. Licenses required -- display of licenses -- renewal -- penalty for late renewal.** (1) A person doing business in this state or a cemetery, mortuary, corporation, partnership, joint venture, voluntary organization, or other entity that erects, maintains, or provides the necessary appliances and facilities for the cremation of human remains and that conducts cremations must be licensed by the board, beginning July 1, 1993. The license must be displayed in a conspicuous place in the crematory facility.

(2) A crematory license expires on June 30 of each year and may be renewed upon payment of a fee set by the board, which includes the cost of annual inspection. If a crematory facility is attached to a licensed mortuary, only one inspection fee may be charged for inspection of both a mortuary facility under 37-19-403 and a crematory facility.

(3) The board may set a penalty fee for late renewal of

a license.

(4) A person in charge of a licensed crematory facility must be licensed as a crematory operator by the board. A person employed by a licensed crematory facility must be licensed as a crematory technician by the board. The license must be displayed in a conspicuous place in the crematory facility.

(5) Crematory operator and crematory technician licenses expire on June 30 of each year and may be renewed upon payment of a fee set by the board. On-the-job training must be provided to a crematory technician at the time of employment.

**NEW SECTION. Section 5. Application -- power of board to set standards -- inspection -- fees.** (1) Application for a crematory, crematory operator, or crematory technician license must be on forms prescribed by the board and must include the name of the applicant, name of the crematory facility, location of the crematory facility and its mailing address, and any further information the board requires. To be eligible for licensure:

(a) as a crematory facility, an application must include a description of the type of structure and equipment to be used in the operation of the crematory facility;

(b) as a crematory operator, an applicant must be at least 18 years of age, must be a high school graduate or



1 have an equivalent degree, and must be of good moral  
2 character.

3 (2) The application must be accompanied by an  
4 application fee set by the board.

5 (3) The board must be notified of any change of  
6 ownership of a crematory within 30 days of the change.

7 (4) A license to operate a crematory in Montana may be  
8 issued only upon inspection of the crematory facility and  
9 upon a finding of compliance with standards for operation  
10 set by the board.

11 (5) A temporary permit may be issued to operate a  
12 crematory facility, as prescribed by board rule, that is  
13 effective until the initial inspection is completed to the  
14 board's satisfaction.

15 (6) A crematory facility may be inspected by a board  
16 member or the board's designated representative during  
17 business hours.

18 (7) The board shall adopt rules governing the cremation  
19 of human remains, the transportation of human remains,  
20 sanitation, equipment, fire protection, building  
21 construction, and recordkeeping.

22 (8) A crematory facility shall comply with all local  
23 building codes, environmental standards, and applicable  
24 state and local regulations.

25 (9) A new crematory facility shall pay an initial

1 inspection fee, set by the board, that must accompany the  
2 application.

3 NEW SECTION. Section 6. Cremation authorization  
4 required -- identification. (1) Except as otherwise provided  
5 in this chapter, a crematory may not cremate human remains  
6 until it has received a cremation authorization.

7 (2) A crematory may not accept unidentified human  
8 remains.

9 (3) Appropriate identification must be placed upon the  
10 exterior of the cremation container upon receipt of the  
11 human remains.

12 NEW SECTION. Section 7. Cremation procedures --  
13 cremation containers. (1) Human remains may not be cremated  
14 except in a licensed crematory.

15 (2) Human remains may not be cremated within 24 hours  
16 after the time of death.

17 (3) A body may not be cremated with a pacemaker or  
18 other potentially hazardous implant, as defined by the  
19 board, including any toxic or explosive-type sealed  
20 implants, in place. The authorizing agent is responsible for  
21 taking--all--necessary--steps--to--ensure--that DISCLOSING THE  
22 EXISTENCE OF any pacemakers or other hazardous implants are  
23 removed--prior--to--cremation.

24 (4) A crematory shall hold human remains, prior to  
25 their cremation, under the following conditions:

(a) In the event the crematory is unable to perform cremation upon receipt of the human remains, it shall place the human remains in a holding facility.

(b) If the human remains are not embalmed, they may not be held longer than 48 hours after the time of death outside of a refrigerated facility.

(5) Human remains delivered to a crematory may not be removed from the cremation container, and the cremation container must be cremated with the human remains.

(6) Unauthorized persons may not be permitted in the retort area while any human remains are awaiting cremation, being cremated, or being removed from the cremation chamber.

(7) The unauthorized, simultaneous cremation of human remains of more than one person within the same cremation chamber is prohibited unless the crematory has received express written authorization from all appropriate authorizing agents for the human remains to be cremated simultaneously. A written authorization exempts the crematory from liability for commingling of the product of the cremation process PROVIDED THE AUTHORIZATION IS COMPLIED WITH.

(8) The identification of the human remains, as indicated on the cremation container, must be verified by the crematory operator or crematory technician immediately prior to the cremation container being placed within the

cremation chamber. The identification must be removed from the cremation container and be placed near the cremation chamber control panel where it must remain until the cremation process is complete.

(9) Upon completion of the cremation process, all recoverable residue must be removed from the cremation chamber. All residue of the cremation process must be separated from material other than bone fragments, which must be processed so as to reduce the bone fragments to unidentifiable particles.

(10) Cremated remains, with proper identification, must be packed and placed in a temporary container or urn ordered by the authorizing agent.

(11) If the cremated remains will not fit within the dimensions of the temporary container or urn, the remainder of the cremated remains must be returned to the authorizing agent in a separate container.

(12) If the cremated remains are to be shipped, the temporary container or designated receptacle ordered by the authorizing agent must be packed securely in a suitable, sturdy, pressure resistant, and properly sealed container.

(13) Cremated remains may be shipped only by a method that has an internal tracing system available and that provides a receipt signed by the person accepting delivery.

NEW SECTION. Section 8. Disposition of cremated

remains. (1) The person arranging the cremation shall require the authorizing agent to provide a signed statement that specifies the ultimate disposition of the cremated remains, if known.

(2) The authorizing agent is responsible for SPECIFYING THE disposition of the cremated remains. If, after a period of 90 days from the date of cremation, the authorizing agent has not specified the ultimate disposition or claimed the cremated remains, the crematory or person in possession of the cremated remains IS RESPONSIBLE FOR DISPOSITION OF THE CREMATED REMAINS AND may then dispose of the cremated remains in any manner permitted by law. A record of the disposition must be made and kept by the crematory operator. This subsection applies to all cremated remains in the possession of a crematory or other party.

(3) Except with the express written consent of the authorizing agent, a person may not:

(a) dispose of or scatter cremated remains in a manner or in a location that commingles the cremated remains with those of another person. The provisions of this subsection (3) do not apply to the scattering of cremated remains from individual containers over public waterways or by air or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for that purpose.

(b) place cremated remains of more than one person in

~~the same closed container. This--subsection--(3)--does--not apply--to--the--cremated--remains--of--members--of--the--same--family that--are--placed--in--a--common--closed--container--designed--for the--cremated--remains--of--more--than--one--person--~~

(4) Cremated remains must be delivered to the individual specified by the authorizing agent on the cremation authorization form.

(5) A representative of the crematory and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased and the date, time, and place of the delivery. The crematory shall retain a copy of the receipt, and the original must be given to the authorizing agent. After this delivery, the cremated remains may be transported, in this state, without a permit and disposed of in accordance with this chapter.

NEW SECTION. **Section 9. Limitation of liability.** (1) A person signing a cremation authorization form shall warrant the truthfulness of any facts set forth in the form, including the identity of the deceased whose remains are to be cremated and the signer's authority to order cremation.

~~(2)--A--crematory,--crematory--operator,--or--crematory technician--who--cremates--human--remains--or--releases--or disposes--of--cremated--remains--is--not--liable--for--the cremation,--release,--or--disposition--if--the--crematory, crematory--operator,--or--crematory--technician--has--received--a~~

signed--cremation--authorization--form--from--the--authorizing agent;

{3}--A-crematory-operator-or-crematory-technician-is-not responsible-or-liable-for-any--valuables--delivered--to--the crematory-with-the-human-remains;

{4}--A-crematory-operator-or-crematory-technician-is-not liable-for-refusing-to-accept-a-body-or-perform-a-cremation;

{a}--for-any-lawful-reason;

{b}--if--the--crematory-operator-or-crematory-technician has--a--reasonable--basis--for--questioning---any---of---the representations-made-by-the-authorizing-agent;-or

{c}--until--receipt--of--a-court-order-or-other-suitable confirmation--that--a--dispute--has--been--settled--if---the crematory--operator--or-crematory-technician-is-aware-of-any dispute-concerning-the-cremation-of-the-human-remains;

{5}--If-a-crematory-operator-or-crematory-technician--is aware--of--any-dispute-concerning-the-release-or-disposition of-the-cremated-remains,-the-crematory-operator-or-crematory technician-may-refuse-to-release-the-cremated-remains--until the--dispute--has--been--resolved--or--until--the--crematory operator--or--crematory--technician-has-been-provided-with-a court-order-authorizing-the-release-or--disposition--of--the cremated---remains;-A-crematory,-crematory--operator,-or crematory-technician-is-not-liable-for-refusing--to--release or--dispose--of--cremated--remains--in--accordance-with-this

subsection;

{6}--Upon-disposing-of-cremated-remains,-the--person--in possession--of--the--cremated-remains-is-discharged-from-any legal--obligation--or--liability--concerning--the---cremated remains;

(2) A CREMATORY, CREMATORY OPERATOR, OR CREMATORY TECHNICIAN WHO PROPERLY CREMATES HUMAN REMAINS, REFUSES TO ACCEPT A BODY OR PERFORM A CREMATION, OR REFUSES TO RELEASE CREMATED REMAINS DUE TO AN UNRESOLVED DISPUTE IS PRESUMED TO HAVE ACTED PROPERLY AND WITHOUT NEGLIGENCE IF THE ACTIONS WERE PERFORMED IN ACCORDANCE WITH TITLE 37, CHAPTER 19.

NEW SECTION. Section 10. Preneed cremation authorizations. (1) Preneed cremation authorizations may be made with a cemetery, funeral establishment, crematory, or any other party. Preneed authorizations must specify the ultimate disposition of the cremated remains, be signed by the authorizing agent, and meet other requirements established by board rule.

(2) A crematory operator or crematory technician shall comply with the terms of the preneed authorization in releasing or disposing of the cremated remains at the time of death unless additional-or-conflicting-instructions-are received-from-a-designated-authorizing-agent.

(3) Upon payment for cremation and disposition, a crematory, crematory operator, or crematory technician in

possession of a cremation authorization form and the deceased's human remains is not liable for the actual cremation and the disposition of the cremated remains if the terms of the preneed authorization have been complied with.

**Section 11.** Section 35-21-102, MCA, is amended to read:

"35-21-102. Definitions. For the purposes of this chapter, certain words used herein--shall in this chapter have the following meanings:

(1) "Columbarium" means a structure, room, or other space in a permanent building or outdoor structure containing that contains niches for permanent inurnment of cremated remains, as defined in 37-19-101, in a place used or intended to be used and dedicated for interment purposes.

~~{2}--"Cremated---remains"---means--human--remains--after cremation-in-a-crematory.~~

~~{3}--"Cremation"---means--the--reduction--of--the--body--of--a deceased-person-to-cremated-remains-in-a-crematory.~~

~~{4}--"Crematory"---means---a---building---or---structure containing--one--or--more--retorts--for--the--reduction--of--bodies of-deceased-persons-to-cremated-remains.~~

{5}{2} "Crypt" or "vault" means a space in a mausoleum of sufficient size used or intended to be used to entomb the uncremated human remains.

{6}{3} "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of

a mausoleum-columbarium authority.

{7}{4} "Entombment" means the placement of human remains in a crypt or vault.

~~{8}{5} "Human remains" or "remains" means--the--body--of--a deceased-person-and--includes--the--body--in--any--stage--of decomposition--and--cremated--remains has the meaning as defined in 37-19-101.~~

{9}{6} "Interment" means the disposition of human remains by cremation and inurnment or entombment in a place used or intended to be used and dedicated for interment purposes.

~~{10}{7} "Interment space" means any space in a crypt, vault, or niche of sufficient size for the entombment or inurnment of the remains of one human being.~~

~~{11}{8} "Inurnment" means placing cremated remains in an urn or other permanent container and placing it in a niche.~~

~~{12}{9} "Mausoleum" means a permanent building or outdoor structure suitable for the entombment of human remains in crypts or vaults in a place used or intended to be used and dedicated for interment purposes.~~

~~{13}{10} "Mausoleum business", "columbarium business", and "mausoleum-columbarium business or purposes" are used interchangeably and mean any and--all business and purposes requisite to, necessary for, or incident to establishing,~~

maintaining, operating, improving, or conducting a mausoleum, columbarium, or mausoleum-columbarium; interring human remains therein; and the care, preservation, and embellishment of such the property.

~~(11)~~ (11) "Mausoleum-columbarium" means a building or structure containing both a mausoleum and a columbarium.

~~(12)~~ (12) "Mausoleum-columbarium authority" means any corporation, whether for profit or not for profit, owning, controlling, or operating lands, buildings, or structures used or intended to be used and dedicated for interment purposes by entombment or inurnment but ~~shall~~ does not refer to any corporation for profit or not for profit or any association, corporation sole, or other person owning or controlling cemetery lands or property, including mausoleums ~~and/or or~~ or columbariums where interment is also made by ground burial.

~~(13)~~ (13) "Niche" means a space in a columbarium or urn garden used or intended to be used for inurnment of cremated human remains.

~~(14)~~ (14) "Plot" or "interment plot" means space in a mausoleum or columbarium used or intended to be used for the interment of human remains. Such The terms include and apply to one or more than-one adjoining crypts or vaults or one or more than-one adjoining niches.

~~(15)~~ (15) "Plot owner", or "owner", or "proprietor" means

any person in whose name an interment plot stands of record as owner in the office of a mausoleum-columbarium authority.

~~(16)~~ (16) "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

~~(17)~~ (17) "Urn garden" means a permanent outdoor structure containing niches of stone or reinforced concrete suitable for and used or intended to be used for inurnment of cremated remains in a place used or intended to be used and dedicated for interment purposes. ~~Wherever~~ Whenever the context ~~shall--permit~~ permits, "urn garden" ~~shall-be-deemed to-be~~ is included in "columbarium".

**Section 12.** Section 35-21-103, MCA, is amended to read:

"35-21-103. **Exemptions and limitations on applicability of chapter.** (1) The provisions of this chapter relating to private mausoleums and columbariums do not apply to any of the following:

(a) any religious corporation, church, religious society or denomination, corporation sole administering temporalities of any church or religious society or denomination, or any cemetery, mausoleum, or columbarium organized, controlled, and operated by any of them;

(b) any county, town, or city cemetery, mausoleum, or columbarium;

(c) any crematory, crematory operator, or crematory

1 technician licensed under Title 37, chapter 19.

2 (2) No A condition, or section, or provision of this  
3 chapter ~~shall~~ or may not be so construed or interpreted as  
4 to apply to any act or in any way pertain to or affect any  
5 Montana mausoleum corporation in existence on July 1, 1949,  
6 operating under Montana charter dated prior to the year  
7 1920.

8 (3) The provisions of this chapter do not affect the  
9 corporate existence or rights or powers of any cemetery  
10 corporation organized under any law of the state of Montana  
11 in which a mausoleum, columbarium, or crematory or  
12 combination thereof ~~shall be~~ is situated, maintained, or  
13 operated in conjunction with a cemetery for the burial of  
14 dead human remains by ground interment. This chapter and all  
15 its provisions ~~shall be~~ are applicable to ~~and only to~~  
16 ~~mausoleums and/or~~ or columbariums owned, operated, or  
17 controlled by a mausoleum-columbarium authority organized  
18 and governed as herein provided in this chapter and owning,  
19 controlling, or operating lands, buildings, or structures,  
20 ~~etc.~~ solely for the entombment and inurnment of human  
21 remains."

22 **Section 13.** Section 35-21-204, MCA, is amended to read:

23 "35-21-204. Power to establish and operate ~~mausoleum,~~  
24 or columbarium, ~~or crematory.~~ Any A private corporation  
25 organized under the laws of the state of Montana and

1 authorized by its articles ~~so-to-do~~ may establish, maintain,  
2 manage, improve, or operate a mausoleum, columbarium, ~~or~~  
3 crematory or ~~any combination thereof~~ mausoleum-columbarium  
4 and conduct any ~~or all~~ of the businesses of a  
5 mausoleum-columbarium ~~and crematory~~ either for or without  
6 profit to its members or stockholders."

7 **Section 14.** Section 35-21-207, MCA, is amended to read:

8 "35-21-207. Rulemaking power. A mausoleum-columbarium  
9 authority may ~~make, adopt, amend, add to, revise, or modify~~  
10 and enforce rules for the use, care, control, management,  
11 restriction, and protection of all or any part of its  
12 mausoleum, or columbarium, ~~or crematory~~ and for the other  
13 purposes specified in 35-21-208 to through 35-21-216,  
14 inclusive."

15 **Section 15.** Section 35-21-208, MCA, is amended to read:

16 "35-21-208. Power to limit use of property. ~~It~~ A  
17 mausoleum-columbarium authority may restrict and limit the  
18 use of all property within its ~~mausoleum, or columbarium, or~~  
19 crematory."

20 **Section 16.** Section 35-21-214, MCA, is amended to read:

21 "35-21-214. Rules for other purposes. ~~It~~ A  
22 mausoleum-columbarium authority may make and enforce rules  
23 for all other purposes ~~deemed~~ considered necessary by the  
24 mausoleum-columbarium authority for the proper conduct of  
25 the business of the mausoleum, or columbarium, ~~or crematory,~~

for the transfer of any plot or the right of interment, and for the protection and safeguarding of the premises and the principles, plans, and ideals on which the mausoleum, or columbarium, or crematory is conducted."

**Section 17.** Section 35-21-216, MCA, is amended to read:

"35-21-216. Person in charge has authority of peace officer. The sexton, superintendent, or other person in charge of a mausoleum-columbarium and such any other person as designated by the mausoleum-columbarium authority ~~designates~~ have the authority of a peace officer for the purpose of maintaining order, and enforcing the rules of the mausoleum-columbarium authority, the laws of the state, and the ordinances of the city or county within the mausoleum-columbarium over which he the person has charge and within such the radius as ~~may be~~ necessary to protect the mausoleum-columbarium or crematory property."

**Section 18.** Section 35-21-217, MCA, is amended to read:

"35-21-217. Power to acquire property. Mausoleum-columbarium authorities may take by purchase, donation, or devise property consisting of lands, mausoleums, crematories, and columbariums within which the interment of the dead may be authorized by law."

**Section 19.** Section 35-21-302, MCA, is amended to read:

"35-21-302. Liability of person signing authorization for interment or cremation. Any A person signing any an

authorization for the interment or cremation of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred or cremated, and his the authority to order interments or cremation. He The person signing an authorization is personally liable for all damage occasioned by or resulting from a breach of such the warranty."

**Section 20.** Section 35-21-303, MCA, is amended to read:

"35-21-303. Authorization exempts mausoleum-columbarium from liability. The mausoleum-columbarium authority may inter or cremate any remains upon the receipt of a written authorization of a person ~~representing himself to be~~ a who represents that the person who has acquired the right to control the disposition of the remains. A mausoleum-columbarium authority is not liable for interring or cremating pursuant to such the authorization unless it has actual notice that such the representation is untrue."

**Section 21.** Section 35-21-304, MCA, is amended to read:

"35-21-304. Limitation on actions against mausoleum-columbarium -- funeral directors, and morticians, and crematory authority exempt from liability. No An action ~~shall~~ may not lie against any mausoleum-columbarium authority relating to the remains of any person which that have been left in its possession for a period of 2 years unless a written contract has been entered into with the



1 mausoleum-columbarium authority for their care or unless  
 2 permanent interment has been made. ~~Nothing in this section~~  
 3 ~~shall be construed as an extension of the existing statute~~  
 4 ~~prescribing the period within which an action based upon a~~  
 5 ~~tort must be commenced.~~ No A licensed mortician, or funeral  
 6 director, crematory authority, crematory operator, or  
 7 crematory technician ~~shall be~~ is not liable ~~in damages~~ for  
 8 any cremated human remains after the remains have been  
 9 deposited with a mausoleum-columbarium authority in the  
 10 state of Montana."

11 **Section 22.** Section 35-21-417, MCA, is amended to read:

12 "35-21-417. Commission or rebate for causing  
 13 disposition of body in crematory, mausoleum, or columbarium  
 14 -- misdemeanor. Every A person who pays, or causes to be  
 15 paid, or offers to pay to any other person, firm, or  
 16 corporation, directly or indirectly, except as provided in  
 17 35-21-416, any commission, or bonus, or rebate, or other  
 18 thing of value in consideration of recommending or causing a  
 19 dead human body to be disposed of in any crematory,  
 20 mausoleum, or columbarium is guilty of a misdemeanor, and  
 21 each violation ~~shall constitute~~ constitutes a separate  
 22 offense."

23 **NEW SECTION. Section 23.** Repealer. Sections 35-21-504,  
 24 35-21-505, and 35-21-709, MCA, are repealed.

25 **NEW SECTION. Section 24.** Codification instruction.

1 [Sections 1 and 4 through 10] are intended to be codified as  
 2 an integral part of Title 37, chapter 19, and the provisions  
 3 of Title 37, chapter 19, apply to [sections 1 and 4 through  
 4 10].

5 **NEW SECTION. Section 25.** Effective date. [This act] is  
 6 effective on passage and approval.

-End-

## 1 SENATE BILL NO. 45

2 INTRODUCED BY KEATING

3 BY REQUEST OF THE BOARD OF MORTICIANS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
6 LICENSING AND REGULATION OF CREMATORIIUMS, CREMATORY  
7 OPERATORS, AND CREMATORY TECHNICIANS; RENAMING THE BOARD OF  
8 MORTICIANS AS THE BOARD OF FUNERAL SERVICE; PROVIDING FOR A  
9 CREMATORY EMPLOYEE MEMBER OF THE BOARD; PROVIDING FOR FEES,  
10 INSPECTION, AND STANDARDS; PROVIDING FOR RECORDKEEPING;  
11 PROVIDING FOR CREMATION PROCEDURES; PROVIDING FOR  
12 DISPOSITION OF CREMATED REMAINS; PROVIDING FOR LIMITATION OF  
13 LIABILITY; PROVIDING FOR PRENEED CREMATION ARRANGEMENTS;  
14 GRANTING RULEMAKING AUTHORITY; REPEALING CREMATORY  
15 REGULATION UNDER THE MAUSOLEUM AND COLUMBARIUM AUTHORITIES  
16 CHAPTER; AMENDING SECTIONS 2-15-1853, 35-21-102, 35-21-103,  
17 35-21-204, 35-21-207, 35-21-208, 35-21-214, 35-21-216,  
18 35-21-217, 35-21-302, 35-21-303, 35-21-304, 35-21-417, AND  
19 37-19-101, MCA; REPEALING SECTIONS 35-21-504, 35-21-505, AND  
20 35-21-709, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

21  
22 STATEMENT OF INTENT

23 A statement of intent is required for this bill because  
24 [sections 4 through 10] grant rulemaking authority to the  
25 board of funeral service to implement provisions of this

1 bill. It is the intent of the legislature that the board, at  
2 a minimum, adopt rules:

3 (1) establishing license application procedures,  
4 license fees, criteria for minimum requirements for license  
5 eligibility, and requirements for license renewal;

6 (2) developing procedures for the issuance, renewal,  
7 suspension, and revocation of licenses; and

8 (3) creating disciplinary standards for licensees,  
9 establishing investigatory procedures for processing  
10 complaints, and adopting ethical standards for licensed  
11 crematory operators.  
12

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

14 NEW SECTION. **Section 1. Purpose.** The legislature finds  
15 that because the practice of crematory operation affects the  
16 lives of the people of this state and because some Montanans  
17 may exercise their right to choose cremation for themselves  
18 or a loved one, it is the purpose of [sections 1 and 4  
19 through 10] to:  
20  
21

22  
23 THERE ARE NO CHANGES IN THIS BILL.  
24 AND WILL NOT BE REPRINTED. PLEASE  
25 REFER TO YELLOW OR BLUE FOR COMPLETE  
TEXT.

