

SENATE BILL NO. 52

INTRODUCED BY G. ROUSH

BY REQUEST OF THE STATE ADMINISTRATION, PUBLIC RETIREMENT SYSTEMS, AND VETERANS'

AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING IMMUNITY TO MORTUARIES AND VETERANS' SERVICE ORGANIZATIONS FOR SIMPLE NEGLIGENCE IN THE INTERMENT OF CERTAIN REMAINS OF MILITARY VETERANS; PROVIDING CONDITIONS; REQUIRING NOTICE; AND PROVIDING DEFINITIONS."

WHEREAS, there are remains of military service veterans lying unclaimed in Montana mortuaries, funeral homes, or other establishments authorized to dispose of those remains; and

WHEREAS, the remains of those veterans are entitled to a decent and honorable final disposition in a manner that conforms with law; and

WHEREAS, there are state veterans' service organizations that are willing to dispose of those remains in a manner that honors the military service of those deceased veterans; and

WHEREAS, concerns regarding liability of the mortuaries or veterans' service organizations, or both, may impede the lawful and honorable final disposition of those remains; and

WHEREAS, it is appropriate that the Legislature act to relieve mortuaries and veterans' service organizations of liability for simple negligence in the final disposition of those remains.

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

**NEW SECTION. Section 1. Disposal of unclaimed veterans' remains -- limits on liability of mortuaries and veterans' service organizations -- notice -- definitions.** (1) A mortuary is not liable for simple negligence in the disposition of the human remains or cremated remains of a veteran to a veterans' service organization for the purposes of interment by that organization if:

(a) the remains have been in the possession of the mortuary for a period of at least 20 years, all or any part of which period may occur or may have occurred before or after October 1, 2001;

(b) the mortuary has given notice, as provided in subsection (2)(a) or (2)(b), to the veteran's next of kin of the matters provided in subsection (3); and

1 (c) the remains have not been claimed by the next of kin of the veteran within the period of time  
2 provided for in subsection (3) following notice to the next of kin.

3 (2) In order for the immunity provided in subsection (1) to apply, a mortuary shall take the  
4 following action, alone or in conjunction with a veterans' service organization, to provide notice to the next  
5 of kin of the deceased veteran:

6 (a) give written notice by mail to the next of kin of the veteran for whom the address of the next  
7 of kin is known or can reasonably be ascertained by the mortuary giving the notice; or

8 (b) if the address of the next of kin is not known or cannot reasonably be ascertained, give notice  
9 to the next of kin by publication once each week for 3 successive weeks in a newspaper of general  
10 circulation:

11 (i) in the county of the veteran's residence; or

12 (ii) if the residence of the veteran is unknown, in the county in which the veteran died; or

13 (iii) if the county in which the veteran died is unknown, in the county in which the mortuary giving  
14 notice is located.

15 (3) The notice required by subsection (2) must include a statement to the effect that the remains  
16 of the veteran must be claimed by the veteran's next of kin within 30 days after the date of mailing of the  
17 written notice provided for in subsection (2)(a) or within 4 months of the date of the first publication of  
18 the notice provided for in subsection (2)(b), as applicable, and that if the remains are not claimed, the  
19 remains may be given to a veterans' service organization for interment.

20 (4) A veterans' service organization receiving human remains or cremated remains of a veteran  
21 from a mortuary for the purposes of interment is not liable for simple negligence in the custody or  
22 interment of the remains if the veterans' service organization INTERS AND DOES NOT SCATTER THE REMAINS AND  
23 does not know and has no reason to know that the remains do not satisfy the requirements of subsection  
24 (1)(a) or (1)(c) or that the mortuary has not complied with the notice requirements of subsection (2)(a) or  
25 (2)(b), as applicable.

26 (5) By accepting the remains of a veteran for interment, a veterans' service organization does not  
27 agree to pay storage or other charges applied by the mortuary for the keeping or preservation of the  
28 remains.

29 (6) A VETERANS' SERVICE ORGANIZATION ACCEPTING REMAINS PURSUANT TO THIS SECTION SHALL TAKE ALL  
30 REASONABLE STEPS TO INTER THE REMAINS IN A VETERANS' CEMETERY. HOWEVER, THE ORGANIZATION IS NOT LIABLE FOR

1 ANY ADDITIONAL EXPENSE FOR INTERMENT IN A VETERANS' CEMETERY AND INTERMENT IN A VETERANS' CEMETERY IS NOT  
2 A CONDITION FOR IMMUNITY UNDER THIS SECTION.

3 ~~(6)~~(7) (a) As used in this section, the following definitions apply:

4 (i) "Mortuary" includes a mortuary as defined in 37-19-101, a funeral home, a funeral director,  
5 a mortician, an undertaker, or an employee of any of the individuals or entities.

6 (ii) "Veterans' service organization" means an association or other entity organized for the benefit  
7 of veterans that has been recognized or chartered by the United States congress, including the disabled  
8 American veterans, veterans of foreign wars, the American legion, the legion of honor, and the Vietnam  
9 veterans of America. The term includes a member or employee of any of those associations or entities.

10 (b) Terms not defined in this subsection ~~(6)~~ (7) have the meaning given them in 37-19-101.

11

12 NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an  
13 integral part of Title 10, chapter 2, and the provisions of Title 10, chapter 2, apply to [section 1].

14

- END -