

SENATE BILL NO. 63

INTRODUCED BY D. SANDS

BY REQUEST OF THE BOARD OF FUNERAL SERVICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING FUNERAL, MORTUARY, AND CEMETERY LAWS; ALLOWING A LICENSING EXEMPTION FOR STUDENTS ENROLLED IN ACCREDITED MORTUARY OR FUNERAL DEGREE PROGRAMS; REMOVING OUTDATED REFERENCES REGARDING UNDERTAKERS AND FUNERAL DIRECTORS; REVISING COST ASSIGNMENTS RELATED TO CEMETERY PERPETUAL CARE AND MAINTENANCE TRUSTS; CLARIFYING FUNERAL AND CEMETERY TRUST PROVISIONS; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 10-2-111, 37-19-101, 37-19-302, 37-19-303, 37-19-402, 37-19-801, 37-19-802, 37-19-803, 37-19-807, 37-19-808, 37-19-823, AND 37-19-827, MCA; AND REPEALING SECTION 37-19-301, MCA."

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

NEW SECTION. **Section 1. Student exemption -- rulemaking.** (1) A student currently enrolled in an accredited or approved funeral service or mortuary science degree program may engage in the practice of mortuary science without a license under this chapter if practicing:

- (a) as part of a required student clinical practicum associated with the educational program; and
- (b) under the supervision of a licensed mortician who operates from a licensed mortuary or branch establishment.

(2) The board may adopt rules pertaining to the requirements for supervision and for mortuary and branch establishments. THE RULES MUST BE LIMITED TO IMPLEMENTING ONLY THE PURPOSES OUTLINED IN SUBSECTION (1).

**Section 2.** Section 10-2-111, MCA, is amended to read:

**"10-2-111. 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 the mortuary complies with the provisions of this section.



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

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

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

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

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

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

12           (3) The notice required by subsection (2) must include a statement to the effect that the remains of the  
13 veteran must be claimed by the veteran's next of kin within 6 months of the date of the first notice under  
14 subsection (2) and that, if the remains are not claimed within that time, the remains may be given to a veterans'  
15 service organization for interment.

16           (4) (a) A mortuary ~~must~~ shall hold the unclaimed remains of a veteran for at least 6 months unless a  
17 nonprofit organization for veterans or a state or federal agency verifies in a writing provided to the mortuary that  
18 there are no surviving family members to claim the remains.

19           (b) If a nonprofit organization for veterans or a state or federal agency verifies in a writing provided to  
20 the mortuary that there are no surviving family members to claim the remains, the mortuary is not required to  
21 provide notice under subsection (2) and the mortuary is immediately covered by the protections in subsection (1).

22           (c) After retaining the unclaimed remains of a veteran for at least 6 months or after verification by a  
23 nonprofit organization for veterans or a state or federal agency that there are no surviving family members to  
24 claim the remains, the mortuary may release the remains to a veterans' service organization for interment.

25           (5) A veterans' service organization receiving human remains or cremated remains of a veteran from  
26 a mortuary for the purposes of interment is not liable for simple negligence in the custody or interment of the  
27 remains if the veterans' service organization inters and does not scatter the remains and does not know and has  
28 no reason to know that the ~~remains do not satisfy the requirements of subsection (1)(a) or (1)(c) or that the~~  
29 mortuary has not complied with the notice requirements of subsection (2)(a) or (2)(b), as applicable.

30           (6) By accepting the remains of a veteran for interment, a veterans' service organization does not agree

1 to pay storage or other charges applied by the mortuary for the keeping or preservation of the remains.

2 (7) A veterans' service organization accepting remains pursuant to this section shall take all reasonable  
3 steps to inter the remains in a veterans' cemetery. However, the organization is not liable for any additional  
4 expense for interment in a veterans' cemetery and interment in a veterans' cemetery is not a condition for  
5 immunity under this section.

6 (8) (a) As used in this section, the following definitions apply:

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

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

14 (b) Terms not defined in this subsection (8) have the meaning given them in 37-19-101."  
15

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

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

19 (1) "Arrangements" includes:

20 (a) planning the details of funeral service, including time of service, type of service, and, if requested,  
21 acquiring the services of clergy;

22 (b) obtaining the necessary information for filing death certificates;

23 (c) comparing or discussing prices, including merchandise prices and financial arrangements; and

24 (d) providing for onsite direction and coordination of participants and onsite direction, coordination, and  
25 facilitation at funeral, graveside, or memorial services or rites.

26 (2) "At-need" arrangements means arrangements made by an authorized person on behalf of a  
27 deceased.

28 (3) "Authorizing agent" means a person legally entitled to order the final disposition of human remains,  
29 including burial, cremation, entombment, donation to medical science, or other means. The order of preference  
30 for an authorizing agent is subject to the priority of rights of disposition established in 37-19-904.

1 (4) "Board" means the board of funeral service provided for in 2-15-1743.

2 (5) "Branch establishment" means a separate facility that may or may not have a suitable visitation room  
3 or preparation room and that is owned by, a subsidiary of, or otherwise financially connected to or controlled by  
4 a licensed mortuary.

5 (6) "Cemetery" means any land or structure in this state dedicated to and used or intended to be used  
6 for interment of cremated remains or human remains. It may be any one or a combination of a burial park for earth  
7 interments, a mausoleum for crypt or niche interments, or a columbarium.

8 (7) "Cemetery company" means an individual, partnership, corporation, or association that:

9 (a) owns or controls cemetery lands or property and conducts the business of a cemetery; or

10 (b) applies to the board to own or control cemetery lands or property and conduct the business of a  
11 cemetery.

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

14 (9) "Columbarium" means a room or space in a building or structure used or intended to be used for the  
15 interment of cremated remains.

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

18 (11) "Cremation" means the technical process, using heat, that reduces human remains to bone  
19 fragments. The reduction takes place through heat and evaporation.

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

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

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

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

27 (c) be resistant to leakage and spillage;

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

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

30 (14) "Crematory" means the building or portion of a building that houses the cremation chamber and the

1 holding facility.

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

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

5 (17) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.

6 (18) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part  
7 17.

8 (19) "Embalming" means:

9 (a) obtaining burial or removal permits or assuming other duties incidental to the practice of embalming;

10 (b) disinfecting and preserving or attempting to preserve dead human bodies in their entirety or in parts  
11 by the use of chemical substances, fluids, or gases ordinarily intended for that use by introducing the chemical  
12 substances, fluids, or gases into the body by vascular or hypodermic injection or by direct introduction into the  
13 organs or cavities; and

14 (c) restorative art.

15 (20) "Funeral directing" includes:

16 (a) supervising funerals;

17 (b) the making of preneed or at-need contractual arrangements for funerals;

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

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

20 (e) representing to the public that one is a funeral director.

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

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

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

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

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

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

29 (23) "Interment" means any lawful disposition of cremated remains or human remains.

30 (24) (a) "Intern" means a person who has met the educational and testing requirements for a license to

1 practice mortuary science in Montana, has been licensed by the board as an intern, and is engaged in the  
2 practice of mortuary science under the supervision of a licensed mortician.

3 (b) For the purposes of this subsection (24), "supervision" means the extent of oversight that a mortician  
4 believes an intern requires based ~~upon~~ on the training, experience, judgment, and professional development of  
5 the intern.

6 (25) "Lot" or "grave space" means a space in a cemetery used or intended to be used for interment.

7 (26) "Mausoleum" means a community-type room or space in a building or structure used or intended  
8 to be used for the interment of human remains in crypts or niches.

9 (27) "Mortician" means a person licensed under this chapter to practice mortuary science.

10 (28) (a) "Mortuary" means a place of business licensed by the board, located in a building or portion of  
11 a building having a specific street address or location, containing but not limited to a suitable room for viewing  
12 or visitation and a preparation room, and devoted exclusively to activities that are related to the preparation and  
13 arrangements for funerals, transportation, burial, or other disposition of dead human bodies.

14 (b) The term includes conducting activities from the place of business referred to in subsection (28)(a)  
15 that are incidental, convenient, or related to the preparation of funeral or memorial services or rites or the  
16 transportation, burial, cremation, or other disposition of dead human bodies in any area where those activities  
17 may be conducted.

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

19 (30) "Niche" means a space in a columbarium or mausoleum used or intended to be used for the  
20 interment of the cremated remains or human remains of one or more deceased persons.

21 (31) "Perpetual care and maintenance" means continual and proper maintenance of cemetery buildings,  
22 grounds, and lots or grave spaces.

23 (32) "Preneed arrangements" means arrangements made with a ~~licensed funeral director or licensed~~  
24 mortician by a person on the person's own behalf or by an authorized individual on the person's behalf prior to  
25 the death of the person.

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

29 (34) "Urn" means a receptacle designed to permanently encase the cremated remains."  
30

1           **Section 4.** Section 37-19-302, MCA, is amended to read:

2           **"37-19-302. License required for practice of mortuary science -- qualifications of applicants.** (1)

3           The practice of ~~embalming or mortuary science by anyone who does not hold a mortician's license issued by the~~  
4 ~~board is prohibited~~ is limited to:

5           (a) licensed morticians;

6           (b) licensed interns; and

7           (c) students exempted under [section 1].

8           (2) A person 18 years of age or older wishing to practice mortuary science in this state must apply to the  
9 board on the form and in the manner prescribed by the board.

10          ~~(2)~~(3) To qualify for a mortician's license, a person must:

11          (a) be of good moral character;

12          (b) have graduated from an accredited college or university with an associate degree in mortuary  
13 science;

14          (c) have earned in subjects prescribed by the board an additional 30 semester or 45 quarter credits from  
15 an accredited college or university that have not been applied toward the requirements in subsection ~~(2)(b)~~ (3)(b);

16          (d) pass an examination prescribed by the board and pay the application fee set by the board by rule;  
17 and

18          (e) serve a 1-year internship under the supervision of a licensed mortician in a licensed mortuary after  
19 passing the examination provided for in subsection ~~(2)(d)~~ (3)(d).

20          ~~(3)~~(4) A person who fails the examination required in subsection ~~(2)(d)~~ (3)(d) may retake it the  
21 examination under conditions prescribed by rule of the board."

22

23           **Section 5.** Section 37-19-303, MCA, is amended to read:

24           **"37-19-303. Mortician's license -- ~~application fee~~ intern's license -- renewals -- fees.** A person

25 ~~possessing the necessary qualifications~~ licensed to practice mortuary science under a mortician's license may

26 apply to the department for a renew the license and on payment of an application the renewal license fee; as set

27 by the board, ~~may take the examination prescribed by the board~~ rule."

28

29           **Section 6.** Section 37-19-402, MCA, is amended to read:

30           **"37-19-402. Operator's license requirements -- facility inspections -- transfer of license to new**

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

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

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

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

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

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

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

16 (7) A mortuary may be inspected by members of the board or their representatives during business  
17 hours."  
18

19 **Section 7.** Section 37-19-801, MCA, is amended to read:

20 **"37-19-801. Title.** This part may be referred to as the "Perpetually Maintained Cemeteries and Funeral  
21 and Cemetery Trusts Act."  
22

23 **Section 8.** Section 37-19-802, MCA, is amended to read:

24 **"37-19-802. Purpose.** The legislature declares that it is the public policy of this state to regulate privately  
25 owned, for-profit cemeteries to protect public health and promote financial stability through perpetual care and  
26 maintenance trusts, including the protection of money held in trust for prearranged funeral or related services."  
27

28 **Section 9.** Section 37-19-803, MCA, is amended to read:

29 **"37-19-803. Application of this part -- exceptions.** (1) This part applies to:

30 (a) all cemeteries and burial grounds located in the state of Montana unless the cemetery is owned and



1 operated by:

2 (1)(i) a church or similar religious organization;

3 (2)(ii) a municipality or county government;

4 (3)(iii) a family, as a private family burial ground where lots are not offered for sale; or

5 (4)(iv) a community nonprofit association in which persons other than the bookkeeper and maintenance  
6 crew are not entitled to receive any pecuniary profit; and

7 (b) trust funds established for:

8 (i) cemetery perpetual care and maintenance funds; and

9 (ii) contracted prearranged funeral or related services under a preneed contract.

10 (2) This part does not apply to contracts for prearranged funeral or related services funded through  
11 insurance."

12

13 **Section 10.** Section 37-19-807, MCA, is amended to read:

14 **"37-19-807. Powers and duties of board -- rulemaking.** ~~The board is charged with (1) In administering~~  
15 ~~this part. The, the board may:~~

16 ~~—— (1) conduct reasonable periodic, special, or other examinations of a cemetery or cemetery company,~~  
17 ~~including mortuary, branch establishment, or crematory.~~

18 (2) The examination may include but is not limited to:

19 (a) an examination inspection of the physical condition or appearance of the cemetery;

20 (b) an audit of the financial condition of the cemetery company, mortuary, branch establishment, or  
21 crematory, and any trust funds maintained by the cemetery company; those entities; and

22 (c) any other examinations the board considers necessary or appropriate in the public interest. ~~The board~~  
23 ~~may also order examinations, including inspections~~ in response to public complaints.

24 (3) The examinations must be made by members or representatives of the board that and may include  
25 a certified or registered public accountant or any other person designated by the board. The cost of the  
26 examination may be charged to the cemetery company, mortuary, branch establishment, or crematory.

27 (2)(4) The board may issue or amend permits to operate a cemetery in accordance with the provisions  
28 of this part;

29 ~~—— (3) adopt rules to enforce the provisions of this part;~~

30 (4)(5) The board may require a cemetery company, a mortuary, a branch establishment, or a crematory

1 to observe minimum accounting principles and practices and to keep books and records in accordance with the  
 2 principles and practices for a period that the board may by rule prescribe; ~~and~~

3 ~~(5)(6)~~ The board may require a cemetery company to provide additional contributions to the perpetual  
 4 care and maintenance fund of the cemetery as provided for in this part, including but not limited to contributions  
 5 not to exceed \$1,000 whenever a cemetery company fails to properly care for, maintain, or preserve a cemetery.

6 (7) The board may adopt rules to enforce the provisions of this part."  
 7

8 **Section 11.** Section 37-19-808, MCA, is amended to read:

9 **"37-19-808. Authority to inspect Inspection of cemeteries and audit of cemetery companies.** (1)

10 ~~The board may order an inspection of a cemetery or may audit a cemetery company.~~ For each cemetery  
 11 examined or each cemetery company audited as provided in 37-19-807 and in accordance with this part, the  
 12 cemetery company shall pay to the board a fee for each examination or audit as the board prescribes by rule.

13 When an examination or inspection is ordered by the board, the cemetery company shall pay, at the state per  
 14 diem rate, travel expenses, meals, and lodging for each day that a member of the board or an authorized  
 15 examiner spends in examining the physical condition or appearance of a cemetery. Once audited, a cemetery  
 16 company may not be required to submit to an audit at the request of the board for a period of 5 years unless  
 17 complaints have resulted in a formal notice of disciplinary action by the department against the cemetery  
 18 company.

19 (2) (a) In lieu of any financial examination that the board is authorized to make, the board may accept  
 20 the audit of an independent certified or registered public accountant if the board has notified the cemetery  
 21 company that the audit would be acceptable and the cemetery company has notified the board in writing that the  
 22 audit will be prepared.

23 ~~(b) The costs of the audit provided for in subsection (2)(a) must be borne by the cemetery company; and~~  
 24 ~~the scope of the audit~~ allowed under subsection (2)(a) must be at least equal to the scope of the examination  
 25 required by the board."  
 26

27 **Section 12.** Section 37-19-823, MCA, is amended to read:

28 **"37-19-823. Records required.** (1) A cemetery company shall make and keep accounts and records  
 29 confirming that ~~it~~ the cemetery company has made the required contributions to its perpetual care and  
 30 maintenance fund. The burden is ~~upon~~ on the cemetery company to maintain the accounts and records.

1 (2) All sales contracts and deeds, unless otherwise authorized by the board, issued by a cemetery  
 2 company must be numbered prior to their execution by the cemetery company and must contain those items the  
 3 board prescribes by rule.

4 (3) A mortuary, branch establishment, or crematory shall make and keep accounts and records  
 5 confirming that the money paid pursuant to a contract for a prearranged funeral or related service has been put  
 6 in trust for the purposes for which the money was paid."

7  
 8 **Section 13.** Section 37-19-827, MCA, is amended to read:

9 **"37-19-827. Contract for prearranged funeral plan or related services -- trust requirement --**  
 10 **interest -- exception.** (1) Prearranged funeral or related services may be presented, negotiated, and sold to the  
 11 public only by a ~~licensed funeral director or licensed mortician.~~

12 (2) Except as provided in subsection ~~(4)~~ (5), all money paid pursuant to a contract for a prearranged  
 13 funeral or related services must be held in trust for the purposes for which it the money was furnished until the  
 14 obligations of a ~~funeral director, embalmer, mortuary, a branch establishment, a crematory, a cemetery firm, or~~  
 15 a mausoleum-columbarium corporation have been:

16 (a) fulfilled according to the terms of the contract; or;

17 (b) terminated, by mutual consent of the parties, ~~until~~ and the money is refunded to the proper party.

18 (3) Any interest accrued by money in a trust must be held in the trust and is subject to the terms of the  
 19 trust agreement and the rules of the board.

20 (4) The board may require a mortuary, a branch establishment, or a crematory to provide an accounting  
 21 or audit of the funds held in trust.

22 ~~(4)~~(5) Money paid for the purchase of a lot, grave space, mausoleum, crypt, niche, or burial right or part  
 23 of a lot or grave space is not subject to the trust requirements of this section if title passes to the purchaser at the  
 24 time that the payment is made."

25  
 26 **NEW SECTION. Section 14. Repealer.** The following section of the Montana Code Annotated is  
 27 repealed:

28 37-19-301. Funeral director's license -- renewal -- fee.

29  
 30 **NEW SECTION. Section 15. Codification instruction.** [Section 1] is intended to be codified as an

1 integral part of Title 37, chapter 19, part 3, and the provisions of Title 37, chapter 19, part 3, apply to [section 1].

2 - END -