
Commerce & Labor Committee

SSB 5752

Brief Description: Concerning funeral services.

Sponsors: Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Prentice, Honeyford and Kohl-Welles).

Brief Summary of Substitute Bill

- Makes technical, clarifying, and substantive changes to the funeral, cemetery, and vital records statutes.
- Creates an academic internship at funeral establishments and terminates apprenticeships, and creates application requirements for examinations.
- Changes the makeup of the Cemetery Board, creates investment requirements, and changes the rights to unoccupied cemetery spaces.
- Consolidates the right to control the disposition of human remains, creates a Cemetery Account in the State Treasury, and alters the vital records and filing requirements of the existing law.

Hearing Date: 3/17/05

Staff: Rebekah Ward (786-7106).

Background:

The licensing of funeral directors and embalmers was enacted in 1937, funeral establishments in 1977, and crematories in 1985. As of 2004, there were 567 active funeral director licenses, 285 apprentice funeral directors, and 221 funeral establishments. The cemetery laws were enacted in 1943, and the Cemetery Board was created in 1953. The statutes have not been updated in nearly a decade with the changes that have occurred within the industry and profession.

Funeral Directors and Embalmers

Applications to take the examinations to become a licensed funeral director or embalmer are filed with the director of the Department of Licensing (DOL) at least 45 days before the exam. These exams are offered four times a year.

In order to become a licensed funeral director, one must be at least 18 years of age, be of good moral character, complete an Associates of Applied Arts in Mortuary Science or a course of instruction not less than two years from an accredited college, and pay a licensing fee. Licenses are renewable for one year periods and ten hours of continuing education is required every two years for new licenses. If a license has lapsed for more than one year, the applicant may submit other proof of competency approved by the board.

Additionally, there are apprenticeship programs under which an apprentice funeral director participates in one year of apprenticeship training consisting of 1,800 hours of employment under a licensed funeral director in Washington, and also participates in a certain number of funeral arrangements. Apprentices must also complete 4.5 hours of AIDS education and training unless they have completed mortuary school within a certain time period.

In order to become a licensed embalmer, one must also be 18 years of age, of good moral character, and obtain an Associate of Applied Arts in Mortuary Science or complete a college program consisting of 60 semester hours or 90 quarter hours. Apprentice embalmers must complete two years of apprentice training consisting of 3,600 hours of employment and embalming of at least 50 human remains under the supervision of a licensed embalmer in Washington.

Cemetery Laws and Vital Records

The Cemetery Board (Board) consists of six members. Two members must have legal or accounting experience and three members must have experience in active administrative management of a Cemetery authority. The Board must meet twice a year to conduct business.

The right to control the disposition of human remains becomes an issue in a situation where the decedent has not made pre-arrangements regarding the disposition of his or her remains and who has the authority to control the disposition. Right to control statutes are found under both the funeral and cemetery statutes. The disposition of human remains in any place other than a cemetery is punishable as a misdemeanor.

Death certificates may be filed by funeral directors or persons in charge of interment, and must be signed by an attending physician or coroner and filed with the local registrar within a certain time period following the death. The law does not prohibit consumers from preparing their own dead for disposition, but certain requirements must be met if this is to happen. Embalming or refrigeration is required if disposition has not been accomplished within 24 hours.

Where human remains are in the possession of a person or entity for a period of one year, and the relatives or persons interested in the remains have failed to direct the disposition of the remains, the remains may be disposed of in a lawful manner by the person or entity in lawful possession.

The ownership or right to an unoccupied cemetery space is considered abandoned if it is neglected and in a state of disrepair for a period of five years, and proper notice has been given. Cemetery management may reclaim unoccupied space after proper notice over a five month period by filing a petition for an order of abandonment with the superior court.

Funeral Trust Funds

The funeral and cemetery prearrangement trust fund laws require that firms hold investment instruments in public depository.

Endowment care statements must be filed with the Board by cemetery authorities or their trustees upon request of the Board. Where the funds total more than \$500,000 the statement must be verified by a certified public accountant.

Payments or contributions for general endowment care are invalid if the beneficiary designations are indefinite or uncertain, or if they violate the rule of pertuity or power or alienation of title.

Where a master trust fund is utilized by more than one participating funeral establishment, expenses for examinations (required to take place every three years) must be shared jointly by all participating funeral establishments.

Additionally, there are certain deposit requirements into a prearranged trust fund which are specified when prearranged contracts for merchandise or services are utilized.

Funeral Director & Embalmer Account

Fund balances that are remaining in the health professional account and are attributable to the funeral director and embalmer professions are transferred to the funeral director and embalmer account.

Cemetery Fund

The Cemetery Fund is subject to appropriation by the Legislature.

Liability For Civil Actions

Persons who violate this chapter are liable in a civil action by and in the name of the State Cemetery Board.

Summary of Bill:

Various technical, clarifying, and substantive changes are made to the funeral, cemetery, and vital records statutes. Major changes include the following:

Funeral Directors and Embalmers

An academic internship is created. An academic intern is a student enrolled in an accredited college funeral service education program who is serving his or her three-month internship at a Washington State funeral establishment, as required for graduation.

Funeral directing or embalming apprenticeships are changed to internships.

Applicants to take the examination to become a licensed funeral director or embalmer are filed with the director of the Department of Licensing at least 15 days before the exam, instead of 45 days.

All duties requiring a license must be performed by a licensee or registered intern. If a license has lapsed for more than one year, the applicant will be required to take the examination and will not have the option of submitting proof of competency.

Cemetery Laws and Vital Records

A definition for "scattering" and a "scattering garden" is created. A scattering garden means a designated area in a cemetery for the scattering of cremated human remains. Definitions for human remains and cremated human remains are also created. A definition of "interment right" is created and means a right to inter human remains in a particular space in a cemetery.

The Cemetery Board (Board) consists of five members instead of six, and persons who have a financial interest (directly or indirectly) are no longer disqualified from eligibility to serve on the Board. Additionally, two members of the board are no longer required to have legal or accounting experience, and one member must represent the general public and not have a financial interest in the cemetery business. Four members are required to have experience in active administrative management of a cemetery authority (this is an increase from the previous requirement of three). The Board is required to meet only once a year to conduct business rather than twice.

The Director of the Department of Licensing is empowered to employ the necessary staff to carry out the duties of the funeral director laws.

Cash advancements as accommodations for persons making funeral arrangements are no longer required to match items billed in itemized billing statements by funeral directors or their employees.

Embalming or refrigeration by licensees must take place within 24 hours of the receipt of human remains.

The ownership or right to unoccupied cemetery space is considered abandoned if it is neglected and in a state of disrepair for a period of three years. After this three-year period of alleged abandonment, the cemetery management may reclaim the unoccupied space after proper notice by filing a petition for an order of abandonment with the superior court. The current notice requirement which prohibits notice from being placed on the unoccupied space until 20 years have elapsed since the last interment in that lot remains in place.

The right to control the disposition of human remains is consolidated under the cemetery laws. With specified approval, cremated remains may be disposed of on private or public property.

A Certificate of Removal Registration is created and permits funeral establishments licensed in Oregon or Idaho to remove human remains from Washington prior to submitting a completed certificate of death. Certificates of Removal Registration are issued by the Director of the Department of Licensing after application for such certificate and payment of a fee by the applicant. In cases where there is more than one funeral branch establishment, each branch is considered a separate establishment. Sanctions may be imposed on holders of Certificates of Removal where there is found to be a violation of a death care statute or rule. Expiration dates are also established on the Certificates of Removal.

Only funeral directors may file death certificates, and the funeral directors must sign the death certificates prior to filing them.

Where human remains are in the possession of a person or entity for a period of 60 days, and the relatives or persons interested in the remains have failed to direct the disposition of the remains, the remains may be disposed of in a lawful manner by the person or entity in lawful possession.

Endowment and Prearrangement Funeral Trusts

The Board's authority to inspect endowment care funds is expanded to include access to records pertaining to prearrangement trust funds in order to verify compliance with applicable laws. Endowment care and pre-arrangement trust fund accounting reports must be filed with the Board by cemetery authorities or their trustees within 90 days after the close of the accounting year rather than upon request by the Board. Reports must be maintained for a period of seven years. Verification by a certified public accountant of the reports is no longer required for funds totaling more than \$500,000.

Payments or contributions for general endowment care is no longer invalid by reason of indefiniteness or uncertainty of the persons designated as beneficiaries. Invalidity due to violations of the laws against perpetuities, or suspension of the power of alienation of title to property is also eliminated.

Where a master trust fund is utilized by more than one participating funeral establishment, expenses for examinations of the pre-arrangement funeral trust are no longer required to be shared jointly by all participating funeral establishments.

Where pre-arrangement contracts for merchandise or services are sold, new deposit requirements are created which specify amounts that are to be deposited into the pre-arrangement trust fund.

Funeral Director and Embalmer Account

Fund balances that are remaining in the health professions account attributable to the funeral director and embalmer professions will no longer be transferred to the funeral directors and embalmers account.

Cemetery Account

The appropriated Cemetery Fund is changed to a non appropriated Cemetery Account (Account) in the custody of the State Treasurer. All monies received under the cemetery laws must be deposited into the Account. Only the Cemetery Board may authorize expenditures.

Liability For Civil Actions

Persons who violate this chapter are liable in a civil action by and in the name of the archeological and historical division of the department of community, trade, and economic development.

Rules Authority: The bill contains no provisions requiring regarding agency rule making.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.