

SENATE BILL REPORT

SB 5190

As of January 17, 2012

Title: An act relating to the disposition of remains of persons who died while serving on active duty in any branch of the United States armed forces, United States reserve forces, or national guard.

Brief Description: Authorizing persons designated by the decedent to direct disposition, if the decedent died while serving on active duty in any branch of the United States armed forces, United States reserve forces, or national guard.

Sponsors: Senators Hobbs, Swecker, Shin and Roach.

Brief History:

Committee Activity: Government Operations, Tribal Relations & Elections: 1/31/11, 2/07/11 [DP]; 1/16/12.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Majority Report: Do pass.

Signed by Senators Pridemore, Chair; Prentice, Vice Chair; Swecker, Ranking Minority Member; Benton, Chase, Nelson and Roach.

Staff: Sharon Swanson (786-7447)

Background: A person has the right to control the disposition of his or her own remains. This can be accomplished by executing a written document signed by the decedent in the presence of a witness that expresses the decedent's wishes regarding the place or method of disposition of the decedent's remains. In addition, a person may control the disposition of his or her remains by making a pre-arrangement with a licensed funeral establishment or cemetery authority. Pre-arrangements that are prepaid or that are filed with a licensed funeral establishment or cemetery authority are not subject to cancellation or substantial revision by survivors. A funeral establishment or cemetery authority is not liable for acting upon a pre-arrangement in the absence of actual knowledge of contrary legal authorization by the decedent.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

If the decedent has not made a pre-arrangement or given directions for the disposition of his or her remains, then the right to control the disposition of the remains vests in the following people in the order named:

- the surviving spouse or state-registered domestic partner;
- the surviving adult children;
- the surviving parents;
- the surviving siblings; and
- a person acting as a representative of the decedent under the signed authorization of the decedent.

Service members are required to complete a United States (U.S.) Department of Defense record of emergency data (DD Form 93). This form is used to show the names and addresses of the service member's spouse, children, parents, and other persons that are to be notified if the service member becomes a casualty and to designate beneficiaries for certain benefits if the service member dies. The form is also used for the service member to designate a person who has the right to control the disposition of the service member's remains. DD Form 93 restricts the designation to the following persons:

- the surviving spouse;
- a blood relative of legal age;
- adoptive relatives of the decedent;
- a person standing in loco parentis.

Summary of Bill (Proposed Substitute): A person who is designated by a service member with the right to control the disposition of the service members remains has the first-priority right to control the disposition of the remains if the person is designated by the service member on the service member's DD Form 93, or its successor form, and if the service member died while serving in military service in any branch of the U.S. Armed Forces, U.S. Reserve Forces, or National Guard.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS COMMITTEE (Proposed Substitute): The substitute bill makes a technical correction to update the underlying RCW section being amended and to incorporate changes enacted last session.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

Testimony From 2011 Regular Session on Original Bill.

PRO: This is a simple bill that ensures that a service member's wishes are followed with respect to their choice of authorized persons to handle their remains should they die on active duty. The DD Form 93, is signed by each service member prior to each deployment. The form contains the most current information related to the service members wishes. The DD

Form 93 is the best indicator of a service member's wishes on who should handle their remains and should be followed first in any order of precedence that involves a death during active duty. Twenty states have already passed similar legislation. Federal law requires that Congress update the current form in compliance with changes to the "Don't ask, Don't Tell" laws. This bill is drafted in such a way to cover future forms that replace the DD Form 93.

Testimony From 2012 Regular Session on Proposed Substitute Bill.

PRO: This bill allows state law to conform to federal law. In December, 2011, Congress changed the federal requirements from a prescriptive list of candidates to allow active duty military to designate anyone to control disposition of remains. The list previously had a very limited number of people. Now state and federal law align to allow service personnel to pick anyone, including a domestic partner.

Persons Testifying:

Persons Testifying From 2011 Regular Session on Original Bill.

PRO: Senator Hobbs, prime sponsor; Mark Sansouci, Department of Defense (DOD) State Liaison Office; Brigadier General Bet Daugherty, WA Military Department; Mike Partridge, Veterans Legislative Coalition.

Persons Testifying From 2012 Regular Session on Proposed Substitute Bill.

PRO: Major General Timothy Lowenberg, WA Military Department; Mark San Souci, DOD State Liaison Office.