



## Economic Affairs Interim Committee

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### 62nd Montana Legislature

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PAT MURDO, Lead Staff  
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CLAUDIA (CJ) JOHNSON, Secretary

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### Concerns raised regarding funeral service and cremation service regulation in Montana

Prepared for Economic Affairs Committee by Pat Murdo, Committee Staff

There are two primary questions before the Economic Affairs Interim Committee as it reviews, as part of House Bill No. 525, whether the Board of Funeral Service( and other licensing boards) are necessary for public health and safety:

- Does the Board of Funeral Service (Board) continue to serve a public purpose, protecting the public's health and safety?
- If the Board remains necessary, what changes may improve the protection of the public's health and safety?

#### **Board Necessity?**

During public comment, those opposed to continuation of the Board noted that the Federal Trade Commission already governs how mortuaries operate. The members of the Board of Funeral Service during their testimony before the Economic Affairs Committee then pointed out that the FTC filed its complaints with the Board.

The Business Standards Division reported 44 complaints were filed in Fiscal Years 2010 and 2011 (combined), with roughly one-third (14) filed by consumers, not quite one-third (12) filed by the FTC (mostly related to the lack of a price list being provided), and the rest either filed by a licensee or other, including two anonymous complaints. Of those 44 complaints, 26 were dismissed with prejudice (meaning they cannot be refiled), 1 led to discipline, 5 were dismissed without prejudice (meaning they can be reconsidered), 6 were investigated, and 6 were pending receipt of more information.

There are 189 licensed morticians, 73 crematory operators, and additional licensed facilities, cemeteries, and various technicians.

Twelve states and the District of Columbia do not license mortuaries, funeral homes, crematory operations, or funeral establishments. The remaining address licensure in a variety of ways (see Appendix A for a sample).

If there were no Board of Funeral Service, the Department of Labor and Industry has said complaints would be handled under Title 37, chapter 1, part 4, which allows investigation of a complaint, requires notice to the alleged violator of the opportunity for a hearing, and requires the department to respond with findings of fact, conclusions of law, and an order as provided under the Montana Administrative Procedure Act. See Appendix B for a summary of FY 10 and FY 11 complaints against the Board of Funeral Service.

#### **Corrective Options?**

As relating to the Board of Funeral Service, during public comment at the Economic Affairs Committee and in letters sent to committee members, the following concerns were raised:

- Unclear distinction between what services can be performed by a mortuary and a crematory (including whether someone in a crematorium where no one has a mortician's license can a) remove pacemakers or other implants potentially dangerous when exposed to high heat or b) move the remains of a deceased person.
- Conflicts of interest on screening panels, particularly when the complaint is against a board member who may be serving on the screening panel.
- Standard right of "privacy" decision made at the discretion of the chair of the screening panel in

terms of both the complainant and the person complained about. Both sides, according to material sent by the board, need to release their right of privacy in order to discuss the complaint but if the person complained about is on the screening panel, the complainant has no right to ask questions - again, according to a letter sent Dec. 30, 2010, by compliance specialist Christina Medina to Glynis Golden Potts ("If you do choose to attend, your participation will be limited to listening to the panel's deliberations, unless the panel asks you a direct question.")

### ***Regulation Elsewhere***

Major differences between Montana laws and a majority of other states' laws:

- Montana does not define funeral establishment. Other states that define the term include funeral homes and crematoria.
- Some states specifically license embalmers. Arizona further states that an embalmer may remove a hazardous implant. Alabama, however, just says to make sure a pacemaker is removed (much like Montana law -- not saying who has the authority<sup>1</sup>). In Montana, embalming falls within the definition of mortuary science (in 37-19-101, MCA), which covers both funeral directing and embalming. Under 37-19-302, MCA, embalming is restricted to someone with a mortician's license. Embalming is defined in 37-19-101, with no further refinements in rule and with no specific authority to remove hazardous materials, as:
  - (a) obtaining burial or removal permits or assuming other duties incidental to the practice of embalming;
  - (b) disinfecting and preserving or attempting to preserve dead human bodies in their entirety or in parts by the use of chemical substances, fluids, or gases ordinarily intended for that use by introducing the chemical substances, fluids, or gases into the body by vascular or hypodermic injection or by direct introduction into the organs or cavities; and
  - (c) restorative art. obtaining burial or removal permits

### ***Pacemaker and other hazardous implant Issues:***

Under 24.147.302 ARM, hazardous implants are defined in Montana as "any foreign object or substance that has been surgically or otherwise placed in the human body" and that "may present a threat of injury to the operator or crematory retort or related equipment during the cremation process, or to the public". Two other states' laws were reviewed relating to implants. Arizona's law was more specific.

- **Alabama** - (d) An authorizing agent (spouse of deceased, etc.) has the duty to inform the funeral director of the presence of a pacemaker or other potentially hazardous implant, including any toxic or explosive-type sealed implants in the human remains. The funeral director shall be responsible for ensuring that all necessary steps have been taken to remove the pacemaker before delivering the human remains to the crematory.
- **Arizona** - 32.1399.10. Unless the deceased has prepared a document pursuant to section 32-1365.01 [a preexisting directive], employees of the crematory shall not remove a dead human body from the container in which it is delivered to the crematory without the express written consent of the authorizing agent. If, after accepting a dead human body for cremation, employees of a crematory discover that a mechanical or radioactive device is implanted in the body, an embalmer licensed pursuant to article 2 of this chapter shall remove the device from the body before cremation takes place.

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<sup>1</sup>Under 37-19-705, MCA outlining cremation procedures: "(3) A body may not be cremated with a pacemaker or other potentially hazardous implant, as defined by the board, including any toxic or explosive-type sealed implants, in place. The authorizing agent is responsible for disclosing the existence of any pacemakers or other hazardous implants." The statute does not say who must remove the hazardous implant. One health official has commented that uranium pellets used to treat prostate cancer have been released in the atmosphere during cremation. An authorizing agent may not know of an implant or think of a range of possibilities to mention at a crematorium.

**Other Issues**

- *Natural composting* -- Another issue that has arisen both in the television series "Harry's Law" and in a report in *High Country News* relates to natural composting, which is a request by a person for their remains to be allowed to naturally decompose without any material or embalming materials that may interfere with natural decomposition. Montana law requires in 37-19-705 that "if human remains are not embalmed, they may not be held longer than 48 hours after the time of death outside of a refrigerated facility." As with cremation, natural composting may require a coroner to sign off on the death, which is intended in part to assure that the death itself was natural. There are no provisions in Montana law for natural composting of human remains.
- *Communicable disease concerns* -- Under 50-16-712, MCA, a coroner, health care facility or health care provider is required to disclose to "personnel from a mortuary licensed under Title 37, chapter 19, at the time of transfer of the dead body or as soon after transfer as possible" the status of the individual relating to an infectious disease. The statute does not mention transfer by a crematorium or that a crematorium be notified of a disease status, possibly because under 39-19-705(5) the crematory is not supposed to remove human remains delivered to a crematory "from the cremation container, and the cremation container must be cremated with the human remains." However, communicable disease is a concern that may call for regulations on natural composting.

**Board of Funeral Service Members:**

Current: R.J. (Dick) Brown, Lewistown since 7/1/2009, licensed mortician  
 Ronald Brothers, Hamilton, licensed mortician  
 William Cronin, Havre, licensed mortician  
 Bart Thompson, Helena, cemetery representative  
 Thomas Meeks, Great Falls, crematory operator  
 John Tarr, Helena, public member

Former: Douglas Lowry, Big Timber, since 7/1/2008, mortician  
 Niles Nelson, Libby, since 7/2/2002 (293-4134), licensed mortician  
 Jean Ruppert, Butte, since 7/2/2002 (782-2721), public member  
 Jered Scherer, Billings, since 7/2/2002 (245-6427), cemeterian

**Written Complaints Provided to EAIC:**

- Glynis Golden Potts - regarding Ronald E. Brothers, licensed as both a mortician (#550) and a crematory operator (#667).

**Selected Current Laws/Regulations for the Board of Funeral Service**

Deaths requiring coroner	46-4-122, MCA	In accidents, injury, criminal acts, suspicious circumstances, in cases of a threat to public health; if death occurred to inmate or a person in custody or as a result of employment, within 24 hours of being admitted to a medical facility or if unattended by a physician in the 30-days prior to death. If a body is to be cremated or shipped into the state without proper burial/transmit permits.
Renewal Date of license	24.101.413	All categories except cemeteries (which may be renewed for 5 years) - Annually by July 1.
Continuing Education	24.147.301 ARM 24.147.2101 24.147.2109	12 months preceding renewal (no credits listed) 24.147.2101 says 12 hrs of continued ed in 2-yr period.

Unprofessional conduct (specific to the Board of Funeral Service)	24.147.2301	Relates to solicitation of business, retention of goods belonging to deceased, failure to provide funeral goods selected or appropriately handle money for pre-need arrangements, etc.
Definitions - includes "hazardous implants"	24.147.302 ARM	any foreign object or substance that has been surgically or otherwise placed in the human body that may present a threat of injury to the operator or crematory retort or related equipment during the cremation process, or to the public.  37-19-705, MCA: Cremation procedures: (3) A body may not be cremated with a pacemaker or other potentially hazardous implant, as defined by the board, including any toxic or explosive-type sealed implants, in place. The authorizing agent is responsible for disclosing the existence of any pacemakers or other hazardous implants.
Fee schedules	24.147.401	Facilities except cemeteries have same application fee. All have same inspection fee. Morticians pay \$50 more than crematory operators and \$100 more for active renewal.
Mortician application	24.147.402	Requires transcript showing 60 semester or 90 quarter credit hours from accredited college or university plus a transcript from an accredited college of mortuary science, department application, and exam certificate.
Examination	24.147.405	Includes knowledge of Title 46, ch. 4; Title 50, ch 15, and rules regarding disposition of dead human bodies.
Licensure of out-of-state applicants	24.147.501	Requires payment of fee and current, active license in good standing in another state. Out-of-state applicant must provide information on other state's requirements so the Montana board can determine equivalency. MT exam required on MT laws.
Crematory Facility Regulations	24.147.1101	Signatures required of authorizing agent and, if death occurred in MT, of the coroner having jurisdiction or the state medical examiner. Authorization information must contain "(c) hazardous implants or other medical devices".
Crematory Operator Licensure	24.147.1114	Requires applicant be 18 years of age, have completed high school or obtained a GED, and be of good moral character as shown by 2 letters of reference.
Perpetual care/maintenance	24.147.1304	Annual (audit or attestation opinion) report required of perpetual care and maintenance fund.

**Appendix A**

**Selected State Regulations of Funeral Service**

<b>States</b>	<b>Regulation</b>	<b>Who's Covered?</b>
Alabama	Board of Funeral Service (4 embalmers, 3 funeral directors - from 7 geographical districts)	funeral directors, embalmers, operators of funeral establishments (includes crematoria)
Alaska	Division of Corporations, Business & Professional Licensing	Says funeral directors may not embalm. Licenses embalmers separately. If embalming not required, an unlicensed person can dispose of body & be paid.
Arizona	State Board of Funeral Directors & Embalmers (4 funeral directors or embalmers plus 3 public members of which 1 is a business owner not tied to funeral business.	Licenses funeral directors, embalmers, interns, or operators of funeral estab. Separate cremationist license
Arkansas	State Board of Funeral Directors & Embalmers (5 embalmers or funeral directors from districts, 1 consumer rep, 1 representing citizens 60 or older.) Separate Burial Association Board.(1 per congressional district, 3 at-large, 1 consumer rep, 1 rep. of elderly, any others added by statute.)	Board licenses funeral directors, embalmers Health Dept. regulates transportation of corpses.
California	Cemetery & Funeral Bureau (has Advisory Committee)	Licenses funeral establishments (includes crematoria), funeral directors, and embalmers

States with shaded boxes handle regulations through a state agency.

Appendix B

<b>Funeral Board - additional information for HB525</b>		
October, 2011		
	<b>FY 10 FY 11 combined</b>	<b>comments</b>
<b>A</b>	<b>Nature of Complaints ?</b>	
	- filed by consumer	14 complaint of service = 6, financial complaint = 6, both service and financial = 2
	- # complaints generated by FTC	12 Compliance with FTC rule which requires a price list be provided to consumer.
	- # compliants filed by a licensee	9
	- # anonymous complaints	2 1 investigated and pending, 1 * not investigated and dismissed with prejudice
	- # complaints filed other	7 information learned through renewals, the media, etc.
		* A compliant is not investigated if the screening panel has the information needed to render a decision without further investigation.
	<b>TOTAL # complaints in past two years</b>	44
<b>B</b>	<b>What was the outcome of the complaints?</b>	
<b>CLOSED</b>	dismissed with prejudice	26 The complaint cannot be considered by the screening panel in the future.
	dismissed without prejudice	5 The complaint can be considered by the screening panel in the future if there are allegations of a similar nature.
	disciplined	1
<b>OPEN</b>	Pending	6 Screening panel requested more info from either complainant or respondent.
	investigation	6
<b>C</b>	<b>If the board were disbanded and the department was required to license the entities, what approach would the department take to reviewing complaints?</b>	The department would address complaints in the manner prescribed by Title 37, Chapter 1, Part 4.