



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5245 (Substitute H-2 as reported without amendment)
House Bill 5246 (Substitute H-1 as reported without amendment)
Sponsor: Representative Gino Polidori (H.B. 5245)
Representative Kenneth Kurtz (H.B. 5246)
House Committee: Military and Veterans Affairs and Homeland Security
Senate Committee: Senior Citizens and Veterans Affairs

Date Completed: 10-12-09

RATIONALE

Many funeral homes possess and store unclaimed cremated remains (cremains) of deceased individuals. Often, these cremains will remain in a funeral operator's possession for many months or even years. Some people believe that the absence of a proper disposition of cremains is particularly objectionable if the deceased was a military veteran. The Missing in America Project (MIAP), an effort supported by various veterans service organizations, funeral operators, and veterans administration agencies, aims to locate and identify the unclaimed cremated remains of veterans nationwide in order to ensure that the cremains receive a proper final disposition. It has been suggested that State law should authorize licensed funeral directors to compile lists of deceased individuals whose cremains are unclaimed so that their veteran status can be determined and the cremains can receive a proper disposition, without exposing the funeral operators to liability for those actions.

veterans service organization for confirmation of the deceased's eligibility for disposition at a veterans cemetery.

- **Require a funeral director to send notice of intent to make a proper disposition of unclaimed cremains to people having the right to decide the disposition of the decedent's body.**
- **Allow the funeral director to arrange the disposition of the cremains with a veterans cemetery, if they remained unclaimed.**
- **Provide for civil and criminal immunity for a funeral director who complied with these provisions.**
- **Provide for civil immunity for a mortuary science licensee who properly disposed of unclaimed cremains at least six months after cremation and at least 30 days after notice to individuals having the right to decide disposition.**

The bills are tie-barred and would take effect on July 1, 2010.

CONTENT

The bills would amend the Occupational Code to do the following:

- **Allow a mortuary science licensee to compile a list of names of unclaimed cremated remains in order to determine whether a deceased individual was a veteran.**
- **Allow a funeral director to release the list to a federally chartered**

House Bill 5245 (H-2)

Under the bill, a person licensed in the practice of mortuary science could compile a list of names of the unclaimed cremains held in his or her possession for six months or more, for the purpose of determining whether one or more of the deceased individuals was a veteran of the United States Armed Services.

A funeral director could release the list of names to any federally chartered veterans service organization (VSO) to confirm with the National Cemetery Administration's central scheduling office in St. Louis, Missouri, whether the deceased was eligible for proper disposition at a veterans cemetery. The VSO would have to report to the funeral director regarding the names of confirmed veterans or spouses of veterans.

If unclaimed cremains were determined to be eligible for proper disposition at a veterans cemetery, the funeral director would have to send written notice of intent to make a proper disposition of the cremains as described under Section 1809a(1) (proposed by House Bill 5246 (H-1)). If the unclaimed cremains of a confirmed veteran were not claimed by the people to whom the notice was sent, the funeral director could arrange for the proper disposition of the cremains with a State or national veterans cemetery.

A funeral director complying with these provisions would be immune from criminal or civil liability arising from compliance.

House Bill 5246 (H-1)

Under the bill, a person licensed in the practice of mortuary science would be immune from civil liability for the proper disposition of unclaimed cremains if the proper disposition were made at least six months after the date of cremation and at least 30 days after the date of the notice required by the bill.

A funeral director claiming immunity under the bill would have to make reasonable efforts to provide written notice of intent to make proper disposition of the unclaimed cremains to the people having the right to make decisions relating to the disposition of a decedent's body under Section 3206 of the Estates and Protected Individuals Code (EPIC). Reasonable efforts would include mailing the notice to a person's last known address.

(Section 3206 identifies the individuals who are presumed to have the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body, including decisions about cremation and the

right to possess cremains, and specifies their priority.)

The proposed section of the Occupational Code would not supersede the provisions of Section 3206 of EPIC involving the priority of people having the right to make decisions relating to the disposition of a decedent's body.

The bill would define "proper disposition" as interment, entombment, or inurnment of unclaimed cremated remains in a cemetery in this State. In the case of the unclaimed cremains of a veteran of the U.S. Armed Forces, proper disposition would include the interment, entombment, or inurnment in a cemetery designated solely for veterans by the U.S. Department of Veterans Affairs or by the Michigan Department of Military and Veterans Affairs.

"Unclaimed cremated remains" would mean the cremated remains of a dead human body that have not been picked up or delivered to a person having the right to make decisions relating to the disposition of a decedent's body under Section 3206 of EPIC.

Proposed MCL 339.1809b (H.B. 5245)

Proposed MCL 339.1809a (H.B. 5246)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Reportedly, it is not unusual for the cremated remains of a deceased person to go unclaimed, leaving funeral directors to store the cremains at funeral homes. While there might be many reasons for cremains to go unclaimed, such as the absence of a close relative, uncertainty about what to do with them, or a belief that cremation itself constitutes final disposition, funeral operators typically do not make a judgment as to why cremated remains are unclaimed. Consequently, they often simply store urns or other containers of cremains on shelves in their facilities.

Veterans service organizations and other veterans' advocates have embarked on a national effort to locate and identify the unclaimed cremains of veterans so that they

can receive a proper final disposition. They believe that veterans' remains should be treated with honor and dignity, in recognition of the veterans' service and sacrifice. This is not achieved if the cremains are simply stored on a shelf in a funeral home's basement or storage closet. By authorizing funeral directors to compile lists of unclaimed cremains and to release the lists to VSOs for the purpose of identifying veterans, and excusing funeral directors from criminal or civil liability for those actions, House Bill 5245 (H-2) would allow the cremated remains of those who served in the nation's military forces to receive a proper burial, entombment, or inurnment.

In addition, House Bill 5246 (H-1) would excuse funeral directors from civil liability for the proper disposition of unclaimed cremains, regardless of whether the deceased was a veteran, if the disposition were made at least six months after the date of cremation and at least 30 days after the date of notice to people having the right to make decisions relating to the disposition under EPIC. This would give funeral directors a course of action for the disposition of unclaimed cremains, other than simply storing them on site.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Elizabeth Pratt
Maria Tyszkiewicz

H0910\5245a

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.