

AMENDED IN SENATE JUNE 11, 1998
AMENDED IN SENATE JUNE 1, 1998
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CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1705

**Introduced by Assembly Member Torlakson
(Coauthors: Assembly Members Hertzberg and Napolitano)**

January 27, 1998

An act to amend Sections 7685.2 ~~and 9741~~, 9741, and 9745 of, and to add ~~Section~~ Sections 9740.5 and 9741.1 to, the Business and Professions Code, and to amend Sections 7054, 7116, 7117, and 103055 of the Health and Safety Code, relating to human remains.

LEGISLATIVE COUNSEL'S DIGEST

AB 1705, as amended, Torlakson. Cremated remains.

Existing law imposes various requirements upon funeral directors with respect to entering into a contract for furnishing services or property in connection with the burial or other disposal of a dead human body.

This bill would require a funeral director to obtain from a person with the right to control the disposition, or from a person prearranging for the cremation and disposition of his or her own remains, a signed declaration designating, *among other things*, specific instructions with respect to the disposition of cremated remains. The funeral director, when entering into a contract to furnish cremation services, would

also be required to provide a written or printed notice to the potential purchaser of cremation services as to obtaining additional information on cremation matters, removal of cremated remains, and cremated remains containers.

Existing law prohibits any person from disposing of or offering to dispose of any cremated human remains unless registered as a cremated remains disposer. Existing law specifies certain information to be included on the registration form.

This bill would additionally require a *every* registered cremated remains disposer to post a copy of his or her current pilot's license *or boating license*, if cremated human remains will be scattered by air *or boat*, and the address of the cremated remains storage area. The bill would require the Department of Consumer Affairs to prepare and deliver to every registered cremated remains disposer a booklet, as specified. It would also permit cremated remains to be scattered or placed in areas where no local prohibition exists, and would require a permit for disposition to contain the address or description of the place where remains are to be buried or scattered. The bill would provide that the placement or scattering of the cremated remains of more than one person in one location pursuant to this section shall not create a cemetery pursuant to specified existing law, or any other provision of law. *The bill would also require a cremated remains disposer to dispose of cremated remains within 60 days of the receipt of those remains, unless a written signed reason for a delay is presented to the person with the legal right to control the disposition of the remains, and to provide the Cemetery Program with certain names and addresses, as specified.*

Existing law authorizes the burial of cremated human remains at sea.

This bill would replace references to burial at sea of cremated remains, and refer instead to scattering at sea, and include inland navigable waters, exclusive of lakes and streams, within the scope of that authorization but would exclude from that authorization the scattering of cremated human remains within 500 yards of the shoreline. The bill would provide that these provisions shall not be construed to



allow the scattering of cremated human remains from a bridge or pier.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7685.2 of the Business and
2 Professions Code is amended to read:

3 7685.2. (a) No funeral director shall enter into a
4 contract for furnishing services or property in connection
5 with the burial or other disposal of human remains until
6 he or she has first submitted to the potential purchaser of
7 those services or property a written or printed
8 memorandum containing the following information,
9 provided that information is available at the time of
10 execution of the contract:

11 (1) The total charge for the funeral director's services
12 and the use of his or her facilities, including the
13 preparation of the body and other professional services,
14 and the charge for the use of automotive and other
15 necessary equipment.

16 (2) An itemization of charges for the following
17 merchandise as selected: the casket, an outside
18 receptacle, and clothing.

19 (3) An itemization of fees or charges and the total
20 amount of cash advances made by the funeral director for
21 transportation, flowers, cemetery or crematory charges,
22 newspaper notices, clergy honorarium, transcripts,
23 telegrams, long distance telephone calls, music, and any
24 other advances as authorized by the purchaser.

25 (4) An itemization of any other fees or charges not
26 included above.

27 (5) The total of the amount specified in paragraphs (1)
28 to (4), inclusive.

29 If the charge for any of the above items is not known
30 at the time the contract is entered into, the funeral
31 director shall advise the purchaser of the charge therefor,
32 within a reasonable period after the information becomes
33 available. All prices charged for items covered under



1 Sections 7685 and 7685.1 shall be the same as those given
2 under such sections.

3 (b) A funeral director shall obtain from the person
4 with the right to control the disposition pursuant to
5 Section 7100 of the Health and Safety Code, or the person
6 prearranging the cremation and disposition of his or her
7 own remains, a signed declaration designating specific
8 instructions with respect to the disposition of cremated
9 remains. ~~The following is a suggested form for~~
10 ~~authorization and declaration:~~

11
12 ~~DECLARATION OF INTENT FOR~~
13 ~~DISPOSITION OF CREMATED REMAINS~~

14
15 ~~I, _____ (NAME OF PERSON ARRANGING FOR~~
16 ~~CREMATION), hereby declare my intention that the cremated~~
17 ~~remains of _____ (NAME OF DECEASED), whose~~
18 ~~cremation I have arranged with _____ (NAME OF~~
19 ~~FUNERAL ESTABLISHMENT OR FUNERAL DIRECTOR)~~
20 ~~and whose cremated remains will be in the possession of _____~~
21 ~~_____ (NAME OF FUNERAL ESTABLISHMENT OR~~
22 ~~FUNERAL DIRECTOR), shall be disposed of in the following~~
23 ~~manner: _____ .~~

24 ~~I am aware that after a period of 120 days from the date of~~
25 ~~cremation, if I have not claimed the cremated remains of _____~~
26 ~~_____ (NAME OF DECEASED), the above named~~
27 ~~funeral establishment may lawfully dispose of the unclaimed~~
28 ~~cremated remains:~~

29
30 _____
31 ~~SIGNATURE OF PERSON~~ ~~DATE~~
32 ~~ARRANGING FOR CREMATION~~
33 _____
34 ~~SIGNATURE OF FUNERAL~~ ~~DATE~~
35 ~~DIRECTOR IN CHARGE~~

36
37 *The department shall make available a form upon which*
38 *the declaration shall be made. The form shall include, but*
39 *not be limited to, the names of the persons with the right*
40 *to control the disposition of the cremated remains and the*



1 *person who is contracting for the cremation services; the*
2 *name of the deceased; the name of the funeral director*
3 *in possession of the remains; the name of the*
4 *crematorium; and specific instructions regarding the*
5 *manner, location, and other pertinent details regarding*
6 *the disposition of cremated remains. The form shall be*
7 *signed and dated by the person arranging for the*
8 *cremation and the funeral director in charge of providing*
9 *service.*

10 (c) A funeral director entering into a contract to
11 furnish cremation services shall provide to the purchaser
12 of cremation services, either on the first page of the
13 contract for cremation services, or on a separate page
14 attached to the contract, a written or printed notice
15 containing the following information:

16 (1) "FOR MORE INFORMATION ON CREMATION
17 MATTERS, CONTACT: Department of Consumer
18 Affairs; (800) 952-5210.

19 (2) A person having the right to control disposition of
20 cremated remains may remove the remains in a durable
21 container from the place of cremation or interment,
22 pursuant to Section 7054.6 of the Health and Safety Code.

23 (3) If the cremated remains container cannot
24 accommodate all cremated remains of the deceased, the
25 crematory shall provide a larger cremated remains
26 container at no additional cost, or place the excess in a
27 second container that cannot easily come apart from the
28 first, pursuant to Section 8345 of the Health and Safety
29 Code.

30 SEC. 2. Section 9741 of the Business and Professions
31 Code is amended to read:

32 9741. (a) Registration shall be on the form
33 prescribed by the board and shall include, but not be
34 limited to, the full name of the registrant, business and
35 residence addresses, description and identification of
36 aircraft or boats which may be used in dispensing
37 cremated human remains, and the area to be served.
38 Each registration application shall be accompanied by
39 the cremated remains disposer fee.



1 (b) ~~A~~—*Every* registered cremated remains disposer
2 who dispenses human remains by air shall post a copy of
3 his or her current pilot's license, and the address of the
4 cremated remains storage area at his or her place of
5 business. *Every registered cremated remains disposer*
6 *who dispenses human remains by boat shall post a copy*
7 *of his or her current boating license and the address of the*
8 *cremated remains storage area at his or her place of*
9 *business.*

10 SEC. 3. Section 9741.1 is added to the Business and
11 Professions Code, to read:

12 9741.1. The Department of Consumer Affairs shall
13 prepare and deliver to each registered cremated remains
14 disposer a booklet that includes, but is not limited to, the
15 following information: details about the registration and
16 renewal requirements for cremated remains disposers;
17 requirements for obtaining state permits to dispose of
18 cremated human remains; state storage requirements, if
19 any; statutory duties pursuant to this article, and other
20 applicable state laws.

21 SEC. 3.1. Section 9740.5 is added to the Business and
22 Professions Code, to read:

23 9740.5. *A cremated remains disposer shall dispose of*
24 *cremated remains within 60 days of the receipt of those*
25 *remains, unless a written signed reason for a delay is*
26 *presented to the person with the right to control the*
27 *disposition of the remains under Section 7100 of the*
28 *Health and Safety Code.*

29 SEC. 3.2. Section 9745 of the Business and Professions
30 Code is amended to read:

31 9745. Each cremated remains disposer shall file, and
32 thereafter maintain an updated copy of, an annual report
33 on a form prescribed by the ~~board~~ Cemetery Program.
34 The report shall include, but not be limited to, the
35 ~~number of cases handled and the area of scattering names~~
36 *of the deceased persons whose cremated remains were*
37 *disposed of, the dates of receipt of the cremated remains,*
38 *the names and addresses of the persons whose cremated*
39 *remains were disposed of, the names and addresses of the*
40 *persons who authorized disposal of those remains, the*



1 *dates and locations of disposal of those remains, and the*
2 *means and manner of disposition.* The report shall cover
3 the fiscal ~~year~~ *years* ending on June 30th and shall be filed
4 with the ~~board~~ *Cemetery Program* no later than
5 September 30th of each year.

6 SEC. 4. Section 7054 of the Health and Safety Code is
7 amended to read:

8 7054. (a) Except as authorized pursuant to the
9 sections referred to in subdivision (b), every person who
10 deposits or disposes of any human remains in any place,
11 except in a cemetery, is guilty of a misdemeanor.

12 (b) Cremated remains may be disposed of pursuant to
13 Sections 7116, 7117, and 103060, or Sections 7054.6 and
14 103060.

15 (c) Subdivision (a) of this section shall not apply to the
16 reburial of Native American remains under an
17 agreement developed pursuant to subdivision (l) of
18 Section 5097.94 of the Public Resources Code, or
19 implementation of a recommendation or agreement
20 made pursuant to Section 5097.98 of the Public Resources
21 Code.

22 SEC. 5. Section 7116 is added to the Health and Safety
23 Code, to read:

24 7116. Cremated remains may be scattered or placed
25 in areas where no local prohibition exists, provided that
26 the cremated remains are not distinguishable to the
27 public, are not in a container, and that the person who has
28 control over disposition of the cremated remains has
29 obtained written permission of the property owner or
30 governing agency to scatter on the property. The
31 placement or scattering of the cremated remains of more
32 than one person in one location pursuant to this section
33 shall not create a cemetery pursuant to Section 7003,
34 Section 8100, or any other provision of law.

35 SEC. 6. Section 7117 of the Health and Safety Code is
36 amended to read:

37 7117. (a) Cremated remains may be taken by boat
38 from any harbor in this state, or by air, and scattered at
39 sea. Cremated remains shall be removed from their
40 container before the remains are scattered at sea.



1 (b) Any person who scatters at sea, either from a boat
 2 or from the air, any human cremated remains shall, file
 3 with the local registrar of births and deaths in the county
 4 nearest the point where the remains were scattered, a
 5 verified statement containing the name of the deceased
 6 person, the time and place of death, the place at which
 7 the cremated remains were scattered, and any other
 8 information that the local registrar of births and deaths
 9 may require. The first copy of the endorsed permit shall
 10 be filed with the local registrar of births and deaths within
 11 10 days of disposition. The third copy shall be returned to
 12 the office of issuance.

13 (c) For purposes of this section, the phrase “at sea”
 14 includes the inland navigable waters of this state,
 15 exclusive of lakes and streams, provided that no such
 16 scattering may take place within 500 yards of the
 17 shoreline. Nothing in this section shall be construed to
 18 allow the scattering of cremated human remains from a
 19 bridge or pier.

20 (d) Notwithstanding any other provision of this code,
 21 the cremated remains of a deceased person may be
 22 scattered at sea as provided in this section and Section
 23 103060.

24 SEC. 7. Section 103055 of the Health and Safety Code
 25 is amended to read:

26 103055. (a) If the certificate of death is properly
 27 executed and complete, the local registrar of births and
 28 deaths shall issue a permit for disposition, that in all cases,
 29 shall specify any one of the following:

30 (1) The name of the cemetery where the remains shall
 31 be interred.

32 (2) Burial at sea as provided in Section 7117.

33 (3) The address or description of the place where
 34 remains shall be buried or scattered.

35 (4) The address of the location where the cremated
 36 remains will be kept, as provided in Section 7054.6, under
 37 the conditions the state registrar may approve, including,
 38 but not limited to, conditions in keeping with public
 39 sensibilities, applicable laws, and reasonable assurances
 40 that the disposition will be carried out in accordance with



1 the prescribed conditions and will not constitute a private
2 or public nuisance.

3 (b) Notwithstanding any other provisions of this part
4 relative to issuance of a permit for disposition, whenever
5 the death occurred from a disease declared by the state
6 department to be infectious, contagious, or
7 communicable and dangerous to the public health, no
8 permit for the disposition of the body shall be issued by
9 the local registrar, except under those conditions as may
10 be prescribed by the state department and local health
11 officers.

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