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AMENDED IN SENATE JUNE 17, 2008

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CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1519

Introduced by Assembly Member Ma

February 23, 2007

An act to add Chapter 2.5 (commencing with Section 7070) to Part 1 of Division 7 of, *and to repeal Section 7071 of*, the Health and Safety Code, relating to human remains.

LEGISLATIVE COUNSEL'S DIGEST

AB 1519, as amended, Ma. Human remains: commercial display.

Existing law, the Uniform Anatomical Gift Act, regulates the making of anatomical gifts and the disposition of donated bodies and body parts.

~~Existing law provides that the Department of Justice is composed of the Office of the Attorney General, and other divisions, bureaus, branches, sections, or other units as the Attorney General may create. The Attorney General is head of the Department of Justice, and has~~

charge of all legal matters in which the state is interested, subject to certain exceptions:

This bill would, with certain exceptions *and until January 1, 2010*, prohibit the public commercial display of human remains, as defined, without a permit for each specimen of human remains displayed from the department. The bill would require the department to issue a permit for this purpose only upon the department's determination that the exhibitor, as defined, has met specified requirements including, but not limited to, a requirement that the exhibitor has obtained valid written authorization from specified individuals to publicly display human remains, as provided. The bill would authorize the department to establish a permit fee, as provided, and would require the revenue from these fees to be deposited in the Human Remains Exhibit Permit Fund, which this bill would create. The bill would require moneys in the fund to be available to the department, upon appropriation by the Legislature, for the purpose of funding the administration of the permit program. The bill would also provide that its provisions do not preempt more restrictive local regulation of the public commercial display of human remains. The bill would further provide that violation of its provisions is punishable by a civil penalty: *require each exhibitor of a commercial display of human remains to conspicuously post specified clearly legible signs, at the entrance and the ticket office to the exhibitor's commercial display, stating whether the exhibitor has obtained consent, as specified, to include each body and specimen of human remains in the exhibit, as provided. It would also require these statements to be contained in all exhibitor advertisements, as provided.*

The bill would, after January 1, 2010, require an exhibitor of a commercial display of human remains to file a specified form with the Department of Justice stating that each body and specimen in the exhibit was donated by the decedent or by a person authorized to make an anatomical gift. The bill would allow the department to charge a reasonable fee to cover the costs of filing and maintaining the filed forms. The bill would also require the exhibitor to maintain a complete file of consent forms for all bodies and specimens in the exhibition.

This bill would make an exhibitor who makes a misrepresentation on the filed form, fails to file a form, or fails to maintain a file of completed consent forms for all bodies and specimens in the exhibition subject to a civil penalty of \$50,000 per violation, as defined, and would prohibit the exhibitor from continuing the commercial display of human remains. The bill would allow enforcement actions by individuals, city attorneys,

district attorneys, or the Attorney General and would award a prevailing plaintiff the penalty money as well as reasonable attorney fees and costs.

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. The Legislature finds and declares all of the
2 following:

3 (a) The Uniform Anatomical Gift Act requires any donor and
4 specified authorized individuals to authorize the use of anatomical
5 gifts for transplantation, therapy, research, and education purposes.

6 (b) Every city, county, or state official responsible for the
7 remains of unclaimed dead bodies is required to use due diligence
8 to notify the relatives of the decedent.

9 (c) The public commercial display of human remains must be
10 regulated to protect individual bodily integrity, as well as the social
11 and cultural values of the state.

12 (d) It is the intent of the Legislature to require persons who
13 participate in the public commercial display of human remains to
14 provide evidence of informed consent specific to the public
15 exhibition and display of human remains from the decedent or
16 relatives of all humans whose remains are put on display, and to
17 provide for the continued use of human remains in the educational,
18 medical, and scientific communities to promote human health and
19 safety.

20 SEC. 2. Chapter 2.5 (commencing with Section 7070) is added
21 to Part 1 of Division 7 of the Health and Safety Code, to read:

22

23 CHAPTER 2.5. COMMERCIAL DISPLAY OF HUMAN REMAINS

24

25 7070. As used in this chapter, the following terms shall have
26 the following meanings:

27 (a) "Commercial display" means either of the following:

28 (1) A display for which the public is charged a fee or other
29 consideration as a condition of viewing.

30 (2) A display for which an exhibitor accepts payment or other
31 consideration.

32 ~~(b) "Department" means the Department of Justice.~~

1 (e)

2 (b) “Exhibitor” means a person or entity who publicly displays
3 or contracts *with a museum facility or other venue* to publicly
4 display human remains.

5 (d)

6 (c) “Human remains” means all or part of the body of a deceased
7 person, regardless of the stage of decomposition.

8 (e)

9 (d) “Museum facility” means a public or private nonprofit
10 institution that is accredited by the American Association of
11 Museums or is a part of an accredited college or university, and
12 that is organized on a permanent basis for essentially educational
13 or aesthetic purposes and that owns or uses tangible objects, cares
14 for those objects, and exhibits them to the general public on a
15 regular basis.

16 ~~7071. (a) Except as provided in subdivision (b), a public~~
17 ~~commercial display of human remains is prohibited unless a permit~~
18 ~~for each specimen of human remains featured in the commercial~~
19 ~~display has been issued by the department pursuant to Section~~
20 ~~7072.~~

21 *7071. (a) Except as provided in subdivision (g), each exhibitor*
22 *of a commercial display of human remains shall conspicuously*
23 *post clearly legible signs in at least 96-point boldface type at the*
24 *entrance and the ticket office to the exhibitor’s commercial display,*
25 *stating whether or not the exhibitor has obtained consent from the*
26 *decedent or by a person authorized to make an anatomical gift of*
27 *the decedent’s remains, to include each body and specimen of*
28 *human remains in the exhibit. The signs shall contain one of the*
29 *following disclosure statements:*

30 *(1) “This exhibition contains human remains, including full*
31 *body cadavers, body parts, and organs, which were donated by*
32 *the decedent or by a person authorized to make an anatomical gift*
33 *under Section 7150.15 or 7150.40 of the Health and Safety Code.*
34 *Each body and specimen in the exhibit was donated with full*
35 *informed consent for the express purpose of public exhibition.”*

36 *(2) “This exhibition contains human remains, including full*
37 *body cadavers, body parts, and organs. The bodies and specimens*
38 *were not donated by the decedent or by a person authorized to*
39 *make an anatomical gift under Section 7150.15 or 7150.40 of the*
40 *Health and Safety Code. The exhibitor cannot independently verify*

1 *whether the human remains in this exhibit are not those of persons*
2 *who were incarcerated, tortured, executed, or otherwise the victim*
3 *of a human rights violation.”*

4 *(b) The exhibitor shall also include the disclosure statement in*
5 *all advertisements of the commercial display, including, but not*
6 *limited to, Web sites, exhibit brochures, and exhibit ticket stubs.*
7 *The disclosure statement contained on Web sites shall be clear*
8 *and conspicuous in at least 16-point boldface type. The disclosure*
9 *statement contained in brochures and programs shall be clear and*
10 *conspicuous in at least 14-point boldface type. This disclosure*
11 *statement contained on ticket stubs shall be clear and conspicuous*
12 *in boldface type.*

13 *(c) An exhibitor who fails to make any disclosure required by*
14 *this section shall be subject to a civil penalty of fifty thousand*
15 *dollars (\$50,000) per violation. Each day of noncompliance shall*
16 *be a separate violation for the purposes of this section.*

17 *(d) An exhibitor who makes any false statement or*
18 *misrepresentation in any disclosure required by this section shall*
19 *be subject to a civil penalty of fifty thousand dollars (\$50,000) per*
20 *violation. Each day of noncompliance shall be a separate violation*
21 *for the purposes of this section.*

22 *(e) An action may be brought by an individual, a city attorney,*
23 *a district attorney, or the Attorney General to enforce this section.*
24 *Reasonable attorney’s fees and costs shall be awarded to the*
25 *prevailing plaintiff for an action brought pursuant to this section.*

26 *(f) Notwithstanding any other law, a violation of this chapter*
27 *shall not be a crime.*

28 ~~(b)~~

29 *(g) This section shall not apply to a display of human remains*
30 *that is any of the following:*

31 *(1) More than 80 years old.*

32 *(2) Consisting solely of human teeth or hair.*

33 *(3) Part of the ordinary display or viewing of the deceased at a*
34 *funeral establishment or part of a similar funeral or memorial*
35 *service.*

36 *(4) An object of religious veneration.*

37 *(5) In the possession of a museum facility. However, if the*
38 *museum facility paid or offered other consideration to an exhibitor*
39 *to display the remains, and the remains are not exempt from this*
40 *chapter pursuant to paragraphs (1) to (4), inclusive, the exhibitor*

1 ~~shall be required to obtain a permit pursuant to Section 7072. shall~~
2 ~~be subject to this section.~~

3 (h) *This section shall remain in effect only until January 1, 2010,*
4 *and as of that date is repealed, unless a later enacted statute, that*
5 *is enacted before January 1, 2010, deletes or extends that date.*

6 7072. (a) *On or after January 1, 2010, any commercial display*
7 *of human remains is prohibited unless the exhibitor files the form*
8 *specified in subdivision (c) with the Department of Justice stating*
9 *that each body and specimen in the exhibit was donated by the*
10 *decedent or by a person authorized to make an anatomical gift*
11 *under Section 7150.15 or 7150.40 with full informed consent and*
12 *for the express purpose of public exhibition. The form shall list a*
13 *description of, and a catalog number for, each body and specimen*
14 *in the exhibit.*

15 (b) *The department may charge a reasonable fee which shall*
16 *cover the costs of filing and maintaining the filed forms.*

17 (c) *The following form shall be used:*

18
19 **HEALTH AND SAFETY CODE SECTION 7072 FILING FOR**
20 **COMMERCIAL PUBLIC EXHIBITION OF HUMAN REMAINS**

21 *Exhibitor Name: _____*

22 *Place of exhibition: _____*

23 *Date(s) of exhibition: _____*

24 *List and description of bodies and specimens used in the*
25 *exhibition, by individual identifying number:*

26 1.

27 2.

28 3.

29 4.

30 5.

31 *(additional numbering as needed)*

32 *The exhibitor attests that listed donor bodies and specimens*
33 *were donated by either the decedent or a person authorized to*
34 *make an anatomical gift under Section 7150.15 or 7150.40 of the*
35 *California Health and Safety Code with full informed consent and*
36 *for the express purpose of public exhibition.*

37 *Signature of Exhibitor: _____*

38 *Date: _____*

39

1 (d) The exhibitor shall maintain a catalog of the consent forms
2 for each body or specimen listed on the form submitted to the
3 department. The file shall be available for inspection by the public
4 upon request and shall list the donor bodies or specimens by their
5 identifying number.

6 (e) An exhibitor who makes a misrepresentation on the filed
7 form, fails to file a form, or fails to maintain a file of completed
8 consent forms for all bodies and specimens in the exhibition shall
9 be subject to a civil penalty of fifty thousand dollars (\$50,000) per
10 violation and shall be prohibited from continuing the commercial
11 display of human remains. Each day of noncompliance is a
12 separate violation for purposes of this section.

13 (f) An action enforcing this section may be brought by an
14 individual, a city attorney, a district attorney, or the Attorney
15 General. The prevailing plaintiff in an action brought pursuant to
16 this section shall receive the penalty funds provided for in
17 subdivision (e) as well as reasonable attorney fees and costs.

18 ~~(e) Any person who violates this section shall be subject to a~~
19 ~~civil penalty of an amount that does not exceed ten thousand dollars~~
20 ~~(\$10,000) for each specimen displayed in violation of this section.~~

21 ~~7072. (a) The department shall issue a permit for the public~~
22 ~~commercial display of human remains only upon a determination~~
23 ~~that the exhibitor has met both of the following requirements:~~

24 ~~(1) (A) Obtained valid written authorization to publicly display~~
25 ~~the human remains from any of the following individuals:~~

26 ~~(i) The decedent, including, but not limited to, authorization~~
27 ~~given by will.~~

28 ~~(ii) A person authorized to make an anatomical gift under~~
29 ~~Section 7150.15 or 7150.40.~~

30 ~~(B) If the human remains are of a minor, the valid written~~
31 ~~authorization required by subparagraph (A) shall be executed by~~
32 ~~the minor's parents or legal guardians.~~

33 ~~(2) Provided written documentation demonstrating the source~~
34 ~~of the human remains. The department shall adopt regulations that~~
35 ~~prescribe standards for purposes of meeting the requirements of~~
36 ~~this paragraph.~~

37 ~~(b) (1) The department may charge a fee for a permit issued~~
38 ~~pursuant to this section. The fee shall be no more than what is~~
39 ~~reasonably necessary to fund the administration of this chapter.~~

~~(2) The fees collected pursuant to paragraph (1) shall be deposited in the Human Remains Exhibit Permit Fund, which is hereby created in the State Treasury. Moneys in the fund, and, notwithstanding Section 16305.7 of the Government Code, any interest earned on moneys in the fund, shall be available to the department, upon appropriation by the Legislature, for purposes of administering this chapter.~~

7073. Nothing in this chapter shall be construed to apply to the utilization of human remains in a manner that meets the purposes set forth in the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150)).

7074. Nothing in this chapter shall be construed to apply to the publisher of any newspaper, periodical, or other publication, or the producer of a motion picture or other visual or audiovisual work, or any radio or television broadcaster, or the owner or operator of any cable, satellite, or other medium of communication who broadcasts, produces, or publishes images of human remains, including over the Internet.

~~7075. Notwithstanding any other provision of law, the department shall, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, promulgate regulations necessary for the implementation of this chapter.~~

~~7076.~~

7075. Nothing in this chapter shall preempt local regulation of the public commercial display of human remains. An ordinance passed by a local governing body either before or after January 1, 2009, on the same subject is not preempted provided that the restrictions contained therein are more restrictive than those contained in regulations adopted pursuant to this chapter.