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SFA



BILL ANALYSIS

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Senate Bill 305 (as enrolled)
Sponsor: Senator Walter H. North
Senate Committee: Local, Urban and State Affairs
House Committee: Tourism

PUBLIC ACT 63 of 1997

Date Completed: 9-4-97

RATIONALE

Michigan's Great Lakes bottom land preserves attract divers from around the State and country who wish to explore for personal enjoyment or for scientific research the remains of the 9,000 to 10,000 shipwrecks that lie at the bottom of the lakes. During some expeditions, divers have photographed the shipwrecks for use in documentary films about seafaring on the Great Lakes. In July 1994, a marine explorer who also is the head of the Metro Media Company in Mt. Morris boarded a mini-submarine and searched the wreckage of the Great Lakes bulk freighter S.S. Edmund Fitzgerald, which sank in Lake Superior on November 10, 1975. All 29 crew members on board disappeared when the 729-foot vessel perished in a violent storm, and it is believed that most of the crew members are entombed in the wreckage. Although no bodies had been seen during previous examinations of the Fitzgerald, divers associated with the 1994 expedition discovered and filmed the body of one of the 29 missing crew members. The resulting film footage and photographs, including images of an unidentifiable partially decomposed body, were made into a video documentary and book that were marketed for commercial purposes. Similar expeditions to the Carl D. Bradley, which sank in 1958 in Lake Michigan, and the Daniel J. Morrell, which went down in Lake Huron, were planned by the Fitzgerald exploration divers. Relatives of crew members who died in these shipwrecks contend that the photographing or filming of these sites, as well as the public display of these images, desecrates the sanctity of the burial sites and reflects an insensitivity to the surviving families. Consequently, some people believe that divers should be prohibited from photographing and displaying photographs of human remains in the Great Lakes and should be penalized for doing so.

CONTENT

The bill amends the Michigan Penal Code to specify that a person is guilty of a felony for violating the Code's prohibition against photographing or publicly displaying a photograph of a decedent (a dead human being) located in a human grave. A felony conviction is punishable by imprisonment for up to two years and/or a fine of not more than \$5,000.

The bill takes effect October 1, 1997, and is tied to House Bill 4523 (Public Act 62 of 1997).

(House Bill 4523 amends the Penal Code to prohibit a person from knowingly photographing or publicly displaying a photograph of all or a portion of a decedent located in a human grave. The prohibition does not apply to a person acting pursuant to a court order, to a person who has obtained the written consent of the decedent's next of kin if the decedent's death occurred less than 100 years before the photographing or public displaying, or to a person who photographs or publicly displays a photograph for law enforcement, medical, archaeological, or scientific purposes. Under House Bill 4523, "photograph" includes an image on videotape, motion picture or other film, or an image captured by digital means. "Human grave" means a site in the State intended for the permanent interment of all or a portion of a decedent and a location in the State, including the bottom lands of the Great Lakes, that contains all or a portion of a decedent who died in an accident or disaster and from which it is impracticable or not intended to remove all or a portion of the decedent. A location includes a shipwreck and a site in the immediate vicinity of a shipwreck in which all or a portion of a decedent is located, and a mine or other underground location within which all or a portion of a decedent is located. "Bottom lands of the Great Lakes" means bottom lands as defined

in the Natural Resources and Environmental Protection Act. The bill also will take effect October 1, 1997, and is tie-barred to Senate Bill 305.)

MCL 750.160b

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

The bill establishes felony penalties for persons who knowingly violate the Penal Code's prohibition against photographing or publicly displaying a photograph of all or a portion of a decedent in a human grave, including a shipwreck and the bottom lands of the Great Lakes. These penalties will help to deter the photographing of persons who died in shipwrecks and other accidents by persons who may seek to profit from such tragedies.

Opposing Argument

Penalizing the photographing or displaying of a photograph of a decedent in a human grave, as provided under the bill, raises constitutional concerns about the infringement of free speech and free press rights under the First Amendment to the U.S. Constitution. In addition, the penalties under this bill as well as the restrictions under House Bill 4523, are unduly punitive and go beyond other dive policies for similar situations, such as those developed by the U.S. Department of the Interior for the memorial to the USS Arizona memorial. (The USS Arizona was sunk during the attack on Pearl Harbor on December 7, 1941.) Although the memorial serves as a shrine to the more than 1,100 service men who are entombed inside the ship's hull, the National Park Service allows certain diving activity including the video filming of interpretative dives connected to the commemoration of the ship and activities related to the bombing of Pearl Harbor. The dives, for example, must be approved by the park's superintendent and conducted under a special use permit issued by the Park Service. Instead of prohibiting the photographing or displaying of photos of shipwreck sites in the Great Lakes and penalizing violators, the State should regulate this activity by developing guidelines and issuing permits as is done at the Federal level.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill could result in increased costs for apprehending, prosecuting, and sanctioning violators of the bill's new provisions. While there is no information currently available on the expected number of new violators, and therefore, the level of increased costs associated with the bill, it is not expected to be significant.

Fiscal Analyst: M. Hansen

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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.