

Senate Fiscal Agency  
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**SFA****BILL ANALYSIS**

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Senate Bill 305 (as reported without amendment)  
Sponsor: Senator Walter H. North  
Committee: Local, Urban and State Affairs

Date Completed: 4-18-97

### 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 human remains in the Great Lakes and should be prohibited from publicly displaying these images.

### CONTENT

The bill would amend the Michigan Penal Code to prohibit a person from knowingly photographing or publicly displaying a photograph of all or a portion of a decedent (a dead human being) located in a human grave, except under certain circumstances. A person who violated the prohibition would be guilty of a felony punishable by imprisonment for up to two years and/or a fine of up to \$5,000.

The prohibition would not apply to a person acting pursuant to a court order, to a person who had obtained the written consent of the decedent's next of kin, or to a person who photographed or publicly displayed such a photograph for law enforcement, medical, or scientific purposes.

Under the bill, "photograph" would include an image on videotape, motion picture or other film, or an image captured by digital means. "Human grave" would mean the site intended for the permanent interment of all or a portion of a decedent and a location that contained all or a portion of a decedent who died in an accident or disaster and from which it was impracticable or not intended to remove all or a portion of the decedent. A location under this provision would include a shipwreck and the bottom lands of the Great Lakes upon which all or a portion of a decedent was located, and a mine or other underground location within which all or a portion of a decedent was located. "Bottom lands" and "Great Lakes" would mean those terms as defined in Part 761 (Aboriginal Records and Antiquities) of the Natural Resources and Environmental Protection Act.

MCL 750.160a

## **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**

By prohibiting a person from knowingly photographing or publicly displaying, except for scientific, medical or law enforcement purposes, 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, the bill would offer protection to the surviving relatives of sailors who lost their lives in shipwrecks on the Great Lakes, and to the survivors of other accident victims. Nineteen years after the sinking of the Edmund Fitzgerald, an explorer from Mt. Morris conducted a dive at the Fitzgerald site in Lake Superior and filmed an unidentifiable partially decomposed body and personal items of the 29 crew members who perished in 1975, as well as scenes of the wreckage. These images eventually were made into a videotape and book that were sold to the public. Many people, including family members of the victims of these shipwrecks, believe that displaying pictures or videotapes of human remains is disrespectful to the memory of the sailors who lost their lives in these tragedies. Fearing that the Fitzgerald site and other Great Lakes shipwreck sites could be exploited, families of crew members and others believe these sites should be left undisturbed and treated as a graveyard. In an attempt to preserve the sanctity of these burial sites, the bill would make it a felony to photograph or film a human body found on the bottom lands of the Great Lakes or at a human grave.

**Response:** Since the bill is not retroactive, it would not affect the videotape and book produced by the explorer from Mt. Morris that were released earlier this year. Furthermore, it is not clear why bodies in shipwrecks or other “graves” should be treated differently from bodies found, and photographed, at other terrible accident scenes and tragedies, such as the Holocaust, the Kennedy assassinations, and the bombing of a Federal building in Oklahoma City.

### **Opposing Argument**

Images of human remains on shipwrecks have been published in many national publications. While the bill may be an attempt to protect family and friends of shipwreck victims from the insensitivity of divers who filmed the remains of crew members for commercial purposes, its implementation could raise a number of

constitutional concerns. Some people fear that the bill would infringe on the free speech and free press rights granted under the First Amendment to the U.S. Constitution. Because of the First Amendment protections, persons may photograph or film Great Lakes shipwrecks for any reason, including to produce a videotape that they plan to market as a documentary of events surrounding the sinking of these vessels. The bill, however, would prohibit people from recording and publishing what they observed of these shipwrecks, even if this were done for educational or historical purposes. Restricting a person’s ability to publish images of human remains in shipwrecks would inhibit news organizations and other entities from expressing the tragedy of maritime disasters. In addition, the U.S. Constitution grants to the Congress the power to regulate commerce among the states. By prohibiting the photographing or displaying of a dead human body located in a human grave, the bill could restrict the interstate sale of print or video materials that included images of human remains in shipwrecks. Thus, the bill could be in conflict with the commerce clause of the Constitution.

### **Opposing Argument**

Although the bill would prevent the photographing of human remains in shipwrecks located within Michigan’s boundaries of the Great Lakes, it would not affect photographing the wreckage of ships located in Great Lakes waters but outside of Michigan’s territorial waters or under the sovereignty of the Canadian government. This would include the Edmund Fitzgerald, which lies in Lake Superior 17 miles north of Whitefish Point, Michigan, in the Province of Ontario.

**Response:** The Canadian government reportedly has enacted a law that prohibits filming or distributing footage of human remains from the Fitzgerald, although it does not prohibit displaying photos taken of this wreckage before the law was enacted. Apparently, Canadian licenses for diving expeditions near the Fitzgerald specify that filming human remains is prohibited, and that if human remains are inadvertently recorded, these images should not be made public but should be destroyed. The bill would extend similar protections to victims of shipwrecks located in Michigan waters.

### **Opposing Argument**

The bill contains language that is vague and broad in scope. Under the bill, “human grave” would mean the site intended for the permanent interment of all or a portion of a decedent or “a location 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". The bill does not define "accident" or "disaster", however, and does not clarify the term "location", other than to note that it would include a shipwreck, the bottom lands of the Great Lakes, a mine, or other underground location. Some people question whether "location" could be interpreted to encompass other sites. For example, it is not certain whether a museum in the State could display photographs of Holocaust victims who were discovered in concentration camp graves. Although the bill might be aimed at preventing the photographing or videotaping of victims of Great Lakes shipwrecks, it could have broader ramifications.

### **Opposing Argument**

The bill would go beyond Federal guidelines on the treatment of human remains in shipwrecks as well as State law regarding the protection of human remains located on the bottom lands of the Great Lakes. According to the U.S. Department of the Interior, the National Park Service issued on December 4, 1990, guidelines designed to assist state and Federal agencies in developing legislation and regulations to carry out their responsibilities under the Abandoned Shipwreck Act of 1987. The guideline pertaining to the treatment of human remains in shipwrecks specifies the following. "To the extent possible, human remains in shipwrecks should be left in place as burials at sea. However, when remains...are being disturbed by unavoidable or uncontrollable human activity, they should be removed and appropriately disposed of... Until human remains are removed, activities that would disturb them should be prohibited." The Department noted that during the development of guidelines, the topic of photographing human remains in shipwreck sites had not been raised. Consequently, photographing human remains was not an issue or item of controversy that needed to be addressed separately. In addition, the Interior Department has developed a dive policy concerning the USS Arizona memorial, which is a shrine to the more than 1,100 service men who are entombed inside the ship's hull. (The USS Arizona was sunk during the attack on Pearl Harbor on December 7, 1941.) The National Park Service has issued guidelines for allowable diving activity at the memorial, which permit the video filming of interpretative dives connected to the commemoration of the USS Arizona and activities related to the bombing of Pearl Harbor. The dives must be approved by the park's superintendent and conducted under a special use permit issued by the

Park Service. Instead of prohibiting the filming of the shipwreck sites in the Great Lakes, the State could regulate this activity by developing guidelines and issuing permits as is done at the Federal level. Furthermore, State law provides for the protection of human remains located in the Great Lakes. Under provisions in the Natural Resources and Environmental Protection Act (NREPA) concerning aboriginal records and antiquities, a person is prohibited from removing, conveying, mutilating, or defacing a human body or the remains of a human body located on the bottom lands of the Great Lakes.

**Response:** Federal guidelines issued pursuant to the Abandoned Shipwreck Act and State law under the NREPA pertain to the treatment or removal of human remains, but neither law specifically prevents photographing or videotaping these remains. In fact, the Federal dive policy at the USS Arizona permits some video taping at the site. A law is needed to prohibit activities that are disrespectful of the persons buried at these sites.

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.