



**House
Legislative
Analysis
Section**

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PERMIT TO DISINTER DEAD

House Bill 5122 as introduced
First Analysis (11-9-95)

Sponsor: Rep. Greg E. Pitoniak
Committee: Commerce

THE APPARENT PROBLEM:

When somebody dies, various procedures must be followed by local health officials, funeral directors, cemetery operators and other persons before final disposition of that person's remains can occur. For instance, the person's death must be certified by a physician and a special permit must be obtained from the local health department before interment takes place. In addition, surviving relatives and/or friends must make funeral arrangements regarding final disposition of their loved one's remains (i.e., whether he or she will be buried, entombed, cremated, or the like). Once a person's remains are interred, however, the act fails to specify whether a person—usually, a relative—may proceed to have the body disinterred for interment elsewhere despite the objections of another person who happens to possess ownership rights over the place where the body was initially interred. Of course when survivors become embroiled in such disputes, funeral homes and cemetery operators often find themselves caught in the middle. To resolve this problem, legislation has been proposed that specifically would permit someone authorized to make funeral arrangements for a dead human body to request a permit to have the body disinterred over the objections of someone with ownership rights over the place of interment, as long as the person with ownership rights was not required to pay for the exhumation.

THE CONTENT OF THE BILL:

The Public Health Code currently requires a person, before exhuming a dead human body, to obtain a permit for disinterment and reinterment from the local health department in whose jurisdiction the body is interred. The bill would amend the code to specify that a person with "authority to make arrangements for a dead human body" under the act (which, it should be noted, is not defined) would also be authorized to request a permit for its disinterment notwithstanding the lack of consent of, or objection by, someone who possessed ownership rights over the place of repose (e.g., burial plot, crypt, and the like). The person with ownership rights, however, would not bear any costs associated with disinterment unless he or she initiated the disinterment or was otherwise legally obligated to pay for it. The

bill further specifies it would not void or otherwise affect a gift made pursuant to the anatomical gift act.

MCL 333.2851

FISCAL IMPLICATIONS:

The House Fiscal Agency says the bill would not affect state or local budget expenditures. (11-8-95)

ARGUMENTS:

For:

The bill would add to the Public Health Code provisions specifying that someone with authority to make decisions regarding the funeral arrangements of someone who has died and been buried or otherwise interred could request a permit to have the body disinterred over the objections of someone with ownership rights over the present place of interment. Generally, decisions of this sort are left to the closest surviving relatives who usually know what the decedent would have wanted and, barring this, whose judgment over such matters is respected simply because of their relationship to the deceased. Sometimes, however, disputes arise among survivors over funeral arrangements, which includes questions about where a deceased person's remains should be interred permanently. Apparently, such disagreements are more likely to occur when a decedent was married more than once, has children from multiple marriages, or when he or she was close to another person but did not legally or in some public way divulge the relationship. However, though the bill would allow for disinterment to occur without the consent or over the objections of someone who owned the rights to the place where the person was interred, it specifies that the owner of the interment spot generally would not have to pay for the disinterment.

Against:

Because the act currently does not specify who has "authority to make arrangements for a dead human body," the bill needs to define this term in order to ensure the authority to request a permit for disinterment

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would, in fact, be granted only to certain persons (presumably, to surviving relatives of the deceased).

Against:

The bill would not necessarily ensure that the desires of the deceased would be considered. It would be more appropriate to require that any decisions made regarding final interment conform to the will of the deceased, whether such sentiments were expressed verbally or in writing, and--barring such instructions--that authority to make these decisions would fall first to a person who had been designated by the deceased to make them.

POSITIONS:

The Michigan Funeral Directors Association supports the bill. (11-8-95)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.