

**FUNERAL/BURIAL PLANS:  
DECISION MAKING AUTHORITY**

**House Bill 4005**  
**Sponsor: Rep. Judith Scranton**  
**Committee: Commerce**

**Complete to 2-6-01**

**A SUMMARY OF HOUSE BILL 4005 AS INTRODUCED 1-10-01**

The bill would amend the Public Health Code to clarify who would have the authority to make funeral and burial arrangements for a deceased person and to establish procedures for when disputes arose between survivors. The term “arrangements” would be defined to refer to “all funeral arrangements for, or the final disposition, disinterment, or the right to possess and make decisions regarding the handling or disposition of, a dead human body”, and would include cremation and the disposal of cremated remains.

Specifically, the bill would specify the order of priority in which relatives could make decisions about arrangements for a deceased person. This would not apply when those seeking to arrange for a funeral and final disposition of a body had actual knowledge that the deceased person had already made such arrangements on a preneed basis through a provider of funeral or cemetery goods or services. Following is the order of priority in which relatives, provided they were over 18 years of age, could make decisions: a surviving spouse; a son or daughter; a parent; a brother or sister; a grandchild; a child of a deceased brother or sister; a grandparent; an aunt or uncle; and a first cousin.

If one or more of the persons listed above did not exercise their right to make arrangements within 48 hours of being contacted, or could not be located after a good faith effort to contact them at their last known address, then that person would forfeit his or her rights and the authority to make arrangements would fall to the next person in the order of priority. If no one in any of the listed categories existed, did not exercise the authority within 48 hours after being contacted, or could not be located after a good faith effort by the personal representative of the estate, then the personal representative would be authorized to make the arrangements.

If there was no personal representative, a “provider” (a funeral establishment or cemetery and its owners, employees, and agents) who was willing to assume the responsibility of making the arrangements could accept instructions from any person who was willing to assume the responsibility. A provider would not be a guarantor that the person making the arrangements had the legal authority to do so. A provider would not be required to contact or independently investigate the existence of any next-of-kin and would be able to rely upon the information provided by family members. The priority list would create a rebuttable presumption and could be relied upon by the provider. If no one assumed responsibility for the arrangements, the provider with custody of the body would have to notify the Department of Community Health. A provider who in good faith and after reasonable diligence attempted to comply with the bill’s provisions would not be liable civilly or criminally for the arrangements provided.

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If two or more persons existed at the same level of priority, then a majority of those persons would have the right to make the arrangements. If a majority could not agree, then anyone on the list or the provider with custody of the body could file a petition in probate court asking the court to settle the matter. If a provider filed the petition, the estate would have to reimburse a provider for costs incurred in bringing the action, except for attorney fees. However, a provider would not be required to file a petition and would not be civilly or criminally liable for not doing so. Further, the provider would not have to accept or inter the remains of the deceased until receiving a court order or a written agreement signed by the parties.

The probate court, in making its decision regarding such a petition, would have consider the following factors: the expressed desires of the deceased person; the reasonableness and practicality of the arrangements; the relative personal affinity of the person to the deceased; the desires of the person or persons ready, willing, and able to pay the costs of the arrangements; a presumption in favor of allowing maximum participation by all wishing to pay respects to the deceased; and the convenience and needs of other family and friends of the deceased wishing to pay respects.

The probate court could also be petitioned to allow someone other than the person with priority to make arrangements. The court could issue an order granting authority to make arrangements to the petitioner where it would work a grave injustice to allow the person or persons with priority to make the decisions or where another person not on the priority list had a “closer personal affinity” to the deceased and so should be allowed to make the arrangements. If such a petition was filed, the provider would have to suspend the arrangements authorized by a person with priority until the probate court issued an order. The court would have to hold a hearing, as described below, and in making its decision, consider at least the expressed desires of the deceased and the desires of those ready, willing, and able to pay the costs of the arrangements. A provider is required to follow the instructions of the probate court when issued as a court order and served on the provider.

Upon receiving a petition to intervene in a dispute or to avoid a grave injustice or allow an unlisted person authority over the arrangements, the probate court would be required to hold a hearing within seven business days. Notice of the hearing would have to be personally served or provided in such a manner that any person on the list would receive notice no less than five days prior to the date of the hearing. The notice would have to include notification of the person’s right to appear at the hearing. Unless he or she could not be located after a good faith effort, the notice and petition would have to be served on the person having the highest priority on the list. The probate court could hear the petition immediately if the person who received notice of the hearing waived his or her rights by filing a written waiver with the court.

The bill would specify that the fact that a person had paid or agreed to pay all or part of the cost of the arrangements would not give that person any greater rights to make all decisions regarding the arrangements that he or she otherwise would have had under the bill.

MCL 333.2851

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■ 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.