

Legislative Analysis



EPIC: POSSESSION OF DECEDENT'S BODY

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House Bills 4870 and 5836

Sponsor: Rep. Bruce Caswell

House Bill 4891

Sponsor: Rep. David Law

Committee: Judiciary

Complete to 3-27-06

A SUMMARY OF HOUSE BILLS 4870 AND 4891 AS INTRODUCED 6-7-05 AND HOUSE BILL 5636 AS INTRODUCED 3-7-06

House Bill 4870 would amend the Estates and Protected Individual Code (MCL 700.1104 et al.) to put into statute the order of priority in which adult survivors of a decedent have the right to possess the decedent's body and the power to make decisions about funeral arrangements, including decisions about cremation and the disposal of cremated remains. The bill would specify that a funeral home that in good faith and after reasonable diligence attempts to comply with the provisions added by the bill would not be civilly liable in connection with the funeral arrangements provided or the handling or disposition of the body.

House Bill 4891 would amend provisions in the Occupational Code (MCL 339.1801) dealing with funeral establishments to cite the new provisions in EPIC.

House Bill 5836 would amend the Public Health Code (MCL 333.2851 et al.) so that the person with authority of disposition of the body and burial in EPIC would be cited in sections addressing consent for autopsies and anatomical gifts. (The bill would also repeal obsolete provisions dealing with the Anatomy Board. The board's duties were transferred to the Department of Community Health by Executive Reorganization Order 1997-4.)

House Bill 4870

Order of Priority. The bill would provide the following order of priority for the possession of a decedent's body and the power to make decisions about funeral arrangements: **the spouse; a child; a parent; a grandchild; a sibling; a grandparent; a child of a deceased sibling; an aunt or uncle; or a first cousin.** A court could order that an individual who had a closer personal relationship to the decedent than an individual with priority could exercise the rights and powers.

If there are two or more individuals at the same level of priority, rights and powers would be exercised by a majority of individuals at that level. If agreement can't be reached, an individual on the priority list could file a petition with the court (as described later).

If no individual listed in the order of priority exists, or exercises the rights and powers, or can be located at his or her last known address after a good faith effort, then the personal representative or nominated personal representative could exercise those rights and powers, either before or after appointment. A "nominated personal representative" refers to a person nominated to act as a personal representative in a will. If the decedent died intestate, then a special personal representative could exercise the rights and powers.

If no person existed to exercise the rights and powers over the body and funeral arrangements, the county medical examiner or public administrator where the decedent was domiciled at the time of death would exercise the rights and powers.

Petitioning the Court. One or more of the following could petition the court to determine who has the authority to exercise the rights and powers over a decedent's body and funeral arrangements: 1) an individual with priority; 2) a funeral establishment with custody of the body; 3) any individual in the priority list, if there is a disagreement among individuals at the same level of priority; or 4) an individual alleging he or she had a closer personal relationship than an individual or individuals with priority. The bill specifies the procedure to be followed, including the parties to be notified of the hearing on the petition.

If a funeral establishment is the petitioner, the decedent's estate, or another person ordered by the court, would reimburse the establishment for all costs incurred in bringing the proceeding, including attorney fees.

In deciding a petition, the court would consider, in addition to other relevant factors, 1) the reasonableness and practicality of the funeral arrangements or handling or disposition of the body proposed by the person bringing the action compared to those proposed by others; 2) the nature of the personal relationship to the deceased of the person bringing the action; and 3) whether the person bringing the action is ready, willing, and able to pay the costs of the funeral arrangements or handling or disposition of the body.

Funeral Homes Immunities and Rights. A funeral establishment would not be required to file a petition with the court and could not be held civilly liable for not doing so.

If there is a disagreement over who is to exercise the powers over the decedent, a funeral establishment would not be required to accept the deceased's body or to inter or otherwise dispose of the body until the establishment receives a court order or a writing signed by the individuals in disagreement that resolves the disagreement. A funeral establishment would have to comply with a court order.

A funeral establishment could rely on the order of priority established in the bill. A funeral establishment would not be a guarantor that a person exercising rights and powers has the legal authority to do so. An establishment does not have the responsibility to contact or independently investigate the existence of relatives of the deceased but may rely on information provided by family members of the deceased.

FISCAL IMPACT:

The bills would have an indeterminate fiscal impact on the judiciary, depending on how they affected judicial caseloads.

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