

Legislative Analysis



EPIC: POSSESSION OF DECEDENT'S BODY

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House Bill 4870 (Substitute H-4)
House Bill 5836 with House Committee amendment
Sponsor: Rep. Bruce Caswell

House Bill 4891 with House Committee amendment
Sponsor: Rep. David Law
Committee: Judiciary

Complete to 4-8-06

A SUMMARY OF HOUSE BILLS 4870, 4891, AND 5636 AS REPORTED FROM COMMITTEE

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 cite the order of priority found in Section 2103 of EPIC and currently used for determining order of inheritance when a person dies intestate (without a will). The surviving spouse would be first in the order of priority and then individuals 18 years of age or older in the highest order of priority under Section 2103, and related to the individual in the closest degree of consanguinity.

[Section 2103 provides the following order of priority for the possession of a decedent's body and the power to make decisions about funeral arrangements: the dead person's descendants by representation; if no surviving descendant, then the dead person's parents

equally; if no surviving descendant or parent, the descendants of the dead person's parents or of either of them by representation. If there is no one in those categories, the priority goes to grandparents or descendants of grandparents.]

Under House Bill 4870, if the surviving spouse or the individual or individuals with the highest priority do not exercise their rights or powers or cannot be located after a good-faith effort to contact them, the rights and powers could be exercised by the individual or individuals in the same order of priority who are related to the decedent in the next closest degree of consanguinity. It once again no one exercises the rights and powers or can be located, the rights and powers would pass to the next order of priority, following Section 2103, and then taking individuals related to the decedent in the closest or, as applicable, next closest degree of consanguinity in that order of priority.

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 after a sufficient attempt, 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 public administrator, if willing, or the county medical examiner where the decedent was domiciled at the time of death would exercise the rights and powers.

Sufficient Attempt to Locate Individuals. An attempt to locate a person would be sufficient if a reasonable attempt is made in good faith by a family member, personal representative, or nominated personal representative of the decedent to contact the person at the last known address, telephone number, or electronic mail address.

Anatomical Gifts. The provisions of the bill cited above would not void or otherwise affect a gift made under Part 101 of the Public Health Code, known as the Uniform Anatomical Gift Act.

Petitioning the Court. In the case of a disagreement or if no one can be located, 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; or 2) a funeral establishment with custody of the body. Venue would be in the county where the decedent was domiciled at the time of death. 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 establishment's actual costs and reasonable attorney fees in bringing the proceeding would be included in the reasonable funeral and burial expenses, or the court could assess costs and fees against one or more interested parties or interveners.

In deciding a petition, the court would consider, in addition to other relevant factors, 1) the reasonableness and practicality of the funeral arrangements or the 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 the 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.

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 the rights and powers over the decedent 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.

A funeral establishment that in good faith and after reasonable diligence attempts to comply with the bill would not be civilly liable in connection with the funeral arrangements provided or in connection with the handling or disposition of the body.

FISCAL IMPACT:

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

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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.