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BILL ANALYSIS

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House Bill 4870 (Substitute H-5 as passed by the House)
House Bill 4891 (as passed by the House)
House Bill 5836 (Substitute H-1 as passed by the House)
Sponsor: Representative Bruce Caswell (H.B. 4870 & 5836)
Representative David Law (H.B. 4891)
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 6-20-06

CONTENT

House Bill 4870 (H-5) would amend the Estates and Protected Individuals Code (EPIC), to do all of the following:

- **Use the order of priority of inheritance established under EPIC for a person who dies intestate (without a will) as the order of priority for identifying who would have the rights and powers to make decisions about a decedent's body.**
- **Specify who would have those rights and powers if no one in the order of priority existed, exercised those rights and powers, or could be located.**
- **Require that decisions be made by majority if the rights and powers were shared.**
- **Allow certain parties to petition the court to determine who had the authority to make decisions about a decedent's body.**
- **Specify activities for which a funeral establishment would not be responsible or liable.**
- **Revise provisions pertaining to the appointment of a special personal representative in certain instances.**
- **Provide that the bill would not affect an anatomical gift.**

House Bills 4891 and 5836 (H-1) would amend the Occupational Code and the Public Health Code, respectively, to refer to a person with authority under EPIC to make decisions about a

decedent's body, rather than to the decedent's next of kin.

House Bill 4870 (H-5) is tie-barred to House Bills 4891 and 5836. House Bill 4891 and 5836 (H-1) are tie-barred to House Bill 4870.

House Bill 4870 (H-5)

Order of Priority

Rights & Powers. Subject to Public Act 181 of 1953 (which requires a county medical examiner to investigate the cause and manner of an individual's death under certain circumstances) and Part 28 (Vital Records) and Article 10 (Anatomical Gifts and Disposition of Human Body Parts) of the Public Health Code, a person with priority under the bill or acting under other provisions of the bill would have the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body. This would include decisions about cremation and the right to possess cremated remains.

Relatives. The surviving spouse or, if there were no surviving spouse, the individual or individuals 18 years of age or older, in the highest priority under Section 2103 of EPIC, and related to the decedent in the closest degree of consanguinity (by blood), would have the rights and powers described above.

(Section 2103 specifies the order of priority of inheritance when a person dies intestate. Under that section, any part of the intestate estate that does not pass to the surviving spouse, or the entire intestate estate if there is no surviving spouse, passes in the following order to the following individuals who survive the decedent:

- The decedent's descendants.
- If there is no surviving descendant, the decedent's parents equally, if both survive, or the surviving parent.
- If there is no surviving descendant or parent, the descendants of the decedent's parents or of either of them by representation.

If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, one-half of the estate passes to the decedent's paternal grandparents equally if both survive, or the surviving paternal grandparent, or the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other one-half passes to the decedent's maternal relatives in the same manner. If there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half.)

If the surviving spouse or the individual or individuals with the highest priority did not exercise their rights or powers under the bill or could not be located after a good-faith effort to contact them, the rights and powers to make decisions about a decedent's body could be exercised by the individual or individuals in the same order of priority under Section 2103 who were related to the decedent in the next closest degree of consanguinity. If the individual or each of the individuals in that order of priority similarly did not exercise his or her rights or powers or could not be located, those rights and powers would pass to the next order of priority, with the order of priority being determined by first taking the individuals in the highest order of priority under Section 2103 and then taking the individuals related to the decedent in the closest or, as applicable, next closest degree of consanguinity in that order of priority.

Nonrelatives. If no individual in the order of priority existed, exercised the rights or powers to make decisions about a decedent's body, or could be located after a sufficient attempt, the personal representative or nominated personal representative could exercise those rights and powers, either before or after his or her appointment. If the decedent died intestate, a special personal representative appointed under EPIC could exercise the rights and powers to make decisions about the decedent's body. If there were no personal representative or special personal representative to exercise those rights and powers, one of the following, as applicable, would have to exercise them:

- The county public administrator, if willing, or the medical examiner for the county where the decedent lived at the time of death.
- If the decedent were incarcerated in a State correctional facility at the time of death, the Director of the Department of Corrections.

General Provisions. If two or more individuals shared the rights and powers to make decisions about a decedent's body, as determined under the bill's order of priority, the rights and powers would have to be exercised as decided by a majority of the individuals. If a majority could not agree, any of the individuals could petition the court (as described below).

An attempt to locate a person in the order of priority would be sufficient if a family member, personal representative, or nominated personal representative of the decedent made a reasonable attempt in good faith to contact the person at his or her last known address, telephone number, or electronic mail address.

The bill would require that the handling, disposition, or disinterment of a body would have to be under the supervision of a person licensed to practice mortuary science in Michigan.

The bill specifies that it would not void or otherwise affect a gift made under Part 101 of the Public Health Code (the uniform anatomical gift Act).

Court Petition

Under the bill, if there were a disagreement involving two or more individuals sharing the rights and powers to make decisions about a decedent's body or if one or more of the individuals described in the order of priority could not be located, one or both of the following could petition the court to determine who had the authority to exercise the rights and powers to make decisions about a decedent's body:

- An individual with the rights and powers to make those decisions.
- A funeral establishment that had custody of the decedent's body.

Venue for the petition would be in the county in which the decedent lived at the time of death.

Upon receiving the petition, the court would have to set a date for a hearing on it. The hearing date would have to be as soon as possible, but not later than seven business days after the date the petition was filed. Notice of the petition and the hearing would have to be served at least two days before the date of the hearing on every individual who had the highest priority, unless the court ordered that service on every such individual was not required. Unless an individual could not be located after a reasonable good-faith effort, service would have to be made on the individual personally or in a manner reasonably designed to give the individual notice. Notice of the hearing would have to include notice of the individual's right to appear at the hearing. An individual served with notice of the hearing could waive his or her rights. If written waivers from all people entitled to notice were filed, the court immediately could hear the petition. The court could waive or modify the notice and hearing requirements if the decedent's body had to be disposed of promptly to accommodate the religious beliefs of the decedent or his or her next of kin.

In deciding the petition, the court would have to consider all of the following, in addition to other relevant factors:

- The reasonableness and practicality of the funeral arrangements or the handling or disposition of the body proposed by the person bringing the action in

comparison with the arrangements, handling, or disposition proposed by one or more individuals with the rights and powers to make those decisions.

- The nature of the personal relationship to the deceased of the person bringing the action, compared with other individuals with the rights and powers to make decisions about the decedent's body.
- Whether the person bringing the action was ready, willing, and able to pay the costs of the funeral arrangements or the handling or disposition of the body.

If a funeral establishment were the petitioner, its actual costs and reasonable attorney fees in bringing the proceeding would have to be included in the reasonable funeral and burial expense under EPIC, or the court could assess those costs and fees against one or more parties or intervenors.

Funeral Establishment

A funeral establishment would not be required to file a petition under the bill and would not be civilly liable for not doing so.

A funeral establishment could rely upon the order of priority determined under the bill. A funeral establishment would not be a guarantor that a person exercising the rights and powers to make decisions about a decedent's body had the legal authority to do so. A funeral establishment would not have the responsibility to contact or independently investigate the existence of the deceased's relatives, but could rely on information provided by the deceased's family members.

A funeral establishment, holder of a license to practice mortuary science issued by the State, cemetery, or crematory, or an officer or employee of any of them, who in good faith complied with the bill and the instructions of a person with rights and powers to make decisions about a decedent's body regarding funeral arrangements and the handling, disposition, or disinterment of a decedent's body would not be civilly liable for the funeral or the handling, disposition, or disinterment.

Special Personal Representative

Under EPIC, a special personal representative may be appointed under certain circumstances. These include

appointment by the court on its own motion to supervise the disposition of the body of a decedent who died intestate, without heirs, and with insufficient assets to pay for a funeral or burial. The bill, instead, would allow the court to appoint a special personal representative to supervise the disposition of the body in a situation in which no individual in the bill's order of priority existed, exercised the rights or powers to make decisions about the decedent's body, or could be located after a sufficient attempt, and the decedent died intestate.

The duties of a special personal representative appointed under this provision include making arrangements with a funeral home, securing a burial plot if needed, obtaining veteran's or pauper's funding if appropriate, and determining the disposition of the body by burial or cremation. The bill specifies that, if the court determined that it would not be necessary to open an estate, the court could appoint a special fiduciary instead of a special personal representative to perform these duties.

House Bill 4891

Article 18 of the Occupational Code governs the practice of mortuary science and describes activities that will subject a person to sanctions under the Code. Among other things, the sanctions apply if a public officer or employee, an official of a nursing home or hospital, a physician, or another person having a professional relationship with a decedent, a county medical examiner, or another public official having temporary custody of the decedent, sends to a person or establishment licensed under Article 18 the remains of a deceased person without first inquiring as to the desires of the next of kin. If kin is found, the person's authority and directions govern the disposal of the remains.

A licensee will be subject to sanctions for receiving remains in violation of these provisions and charging for a service in connection with the remains before their delivery as stipulated by the kin. This does not prevent a licensee from charging and being reimbursed for services rendered in connection with the removal of the remains in case of accidental or violent death, and rendering necessary services required until the next of kin or the person who is

chargeable with the funeral expenses is notified.

The bill would replace these references to "next of kin" or "kin" with references to the person with authority over the disposal of the remains of the decedent under Section 3206 of EPIC (which, under House Bill 4870 (H-5), would identify the individuals with the rights and powers to make decisions about a decedent's body).

House Bill 5836 (H-1)

The bill would refer to the person with authority under Section 3206 of EPIC, rather than the next of kin, specific relatives, or a special administrator appointed by the probate court in provisions of the Public Health Code that do the following:

- Require an official of a public institution or a State or local officer in charge of an unclaimed body to use due diligence to notify the relatives of the deceased.
- Provide that an unclaimed body is subject to identification and claim by an authenticated relative of the deceased or a special administrator appointed by the probate court, during the period the body is held after being assigned for scientific or educational purposes.
- Prohibit an autopsy from being performed except by a physician who has been granted consent by whichever one of specified individuals assumes custody of the body for purposes of burial.
- Provide that if a donee (under the uniform anatomical gifts Act) accepts a gift of the entire body, the surviving spouse, next of kin, or other person having authority to arrange for the disposition of the body may authorize embalming and the use of the body in funeral services.
- Provide that, if the gift is a physical part of the body, custody of the remainder vests in the surviving spouse, next of kin, or other person having authority to arrange for disposition of the remainder of the body.

The bill also would delete various references to the Anatomy Board and refer instead to the Department of Community Health (DCH). The bill would repeal Section 2651 of the Code, which provided for the creation, appointment, and operation of the Anatomy Board, and Section 2661 of the Code, which

addresses autopsies upon unclaimed bodies required to be delivered to the Anatomy Board (MCL 333.2651 and 333.2661). (Executive Reorganization Order 1997-4 transferred all the statutory authority, duties, powers, functions, and responsibilities of the Anatomy Board to the DCH Director.)

MCL 700.1104 et al. (H.B. 4870)
339.1801 & 339.1810 (H.B. 4891)
333.2652 et al. (H.B. 5836)

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FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

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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.