



**House
Legislative
Analysis
Section**

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FUNERAL ARRANGEMENTS

**House Bill 4458 (Substitute H-6)
First Analysis (3-22-94)**

**Sponsor: Rep. Gregory E. Pitoniak
Committee: Public Health**

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). Sometimes, however, disputes arise among survivors about decisions regarding funeral arrangements, especially when someone fails to leave clear instructions regarding final disposition of his or her remains. Disagreements may also arise sometime after interment has occurred over whether the deceased's remains should be disinterred and reinterred elsewhere. Of course when survivors become embroiled in such disputes, funeral homes and cemetery operators often find themselves caught in the middle. Usually these disputes can be resolved peaceably by interested parties, but occasionally they end up in court. Judges, however, have little in terms of case law to guide them in their decisions and generally have had to rely on common law principles to decide such cases; even so, most courts simply do not have time to resolve such minor disputes. To address these problems, legislation has been proposed that would specify a priority list of individuals who could make decisions regarding funeral arrangements for deceased persons, provide liability protection for funeral establishments and cemeteries when disputes arose among survivors, and establish procedures for resolving such disputes in court.

THE CONTENT OF THE BILL:

The bill would add a new section to the vital records part of the Public Health Code that would list, in order of priority, who could make decisions

about the funeral arrangements for, or final disposition of, a deceased person, as well as providing a dispute resolution process for situations when those having the right to make these decisions could not agree on arrangements involving a decedent.

Relative priority list. More specifically, the bill would set a list, in order of priority, of surviving relatives at least 18 years old who would have the right to make all decisions regarding arrangements for a decedent. ("Arrangements" would include all funeral arrangements for a decedent, or the final disposition, disinterment, or the right to possess and make decisions regarding the handling or disposition of a decedent.) The list would be as follows:

- (1) spouse,
- (2) son or daughter,
- (3) parent,
- (4) brother or sister,
- (5) grandchild,
- (6) nephew or niece (if the decedent's brother or sister were deceased),
- (7) grandparent,
- (8) aunt or uncle, or
- (9) first cousin.

If one or more of the above listed relatives didn't exercise their right to make arrangements within 48 hours of being contacted, or couldn't be located after a good faith effort to contact them at their last known address, the relative would forfeit his or her authority to make arrangements and the right to make the arrangements would fall to the next

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relative on the list.

If two or more people had the same priority under the bill, the majority would have authority to make arrangements. If a majority couldn't agree on the arrangements, however, any of the listed relatives or the "provider" (i.e., the funeral establishment or cemetery, or their owners, employees and agents) who had custody of the decedent's body, or both, could file a petition with the probate court for the county in which the deceased had lived requesting the probate court to decide. Under the bill, providers would not have to petition probate courts in cases of disagreement among relatives and would not be civilly or criminally liable for not doing so. Also, if a dispute arose a provider would not be liable for refusing to 1) accept the decedent's remains, 2) inter or otherwise dispose of his or her remains, or 3) complete the arrangement until the provider received a court order or other written agreement signed by the parties in dispute.

Personal representatives of estates. If none of the listed relatives existed or exercised their rights to make arrangements within 48 hours of being contacted, or if none could be located after a good faith effort by the personal representative of the estate, then the personal representative of the estate could authorize arrangements before he or she was appointed. Generally, however, a personal representative of the deceased person's estate could not make arrangements just because he or she was the personal representative of the estate.

Provider arrangements. If there were no personal representative of the estate, a provider that was willing to assume the responsibility for providing the arrangements could accept instructions from anyone willing to assume the responsibility of making the arrangements. The list of priority set forth in the bill would be a rebuttable presumption upon which a provider could rely. Under the bill, a provider would not be a guarantor that the person making the arrangements had the legal authority to do so, and a provider would not be responsible to contact or independently investigate the existence of next-of-kin but could rely on information provided by family members. A provider who in good faith and after reasonable diligence tried to comply with this provision would not be civilly or criminally liable for the arrangements provided.

Arrangements by another. Under the bill, someone who alleged that permitting one or more of the

decedent's relatives to authorize arrangements could "work a grave injustice" or that someone other than a relative, under all the circumstances of the case, had a "closer personal affinity" to the deceased and should be allowed to make the arrangements could file a petition with the probate court for the county where the deceased was living at the time of death or the county where the decedent's remains were located requesting an order to give him or her authority to make the arrangements. A provider could, but would not have to, suspend or delay the arrangements authorized by a relative due to pending court action in such a situation, but would only have to follow the explicit instructions of the probate court when they were issued as a court order and served on the provider.

Rights to disinterment. Subject to the bill's provisions, a person who was authorized to make arrangements could also order a disinterment of a dead human body despite the lack of consent, or one or more objections, of a person who possessed ownership rights over the place of repose. Unless the person with ownership rights over the place of repose initiated the disinterment or was otherwise legally obligated for its costs, he or she would not bear any cost associated with the disinterment.

Probate court decisions. When a probate court received a petition under the bill, it would have to set a date for a hearing as soon as possible but no later than three business days after the petition was filed. Notice of the petition and the time and place of the hearing would have to be served personally on all of the relatives specified in the list and to the petitioner at least three days before the hearing. Notice of a hearing would have to include notice of the person's right to appear at the hearing, his or her right to present and cross-examine witnesses, and his or her right to counsel. Everyone notified of a petition for a hearing could waive the notice of the hearing, and once a written waiver had been filed the court could hear the petition immediately.

In deciding an action involving multiple relatives, the court would have to consider at least all of the following factors: the reasonableness and practicality of the arrangements; the relative personal affinity of the person to the deceased; the desires of the person or people ready, willing and able to pay for the costs of the arrangements; the convenience and needs of other family and friends of the deceased wishing to pay their respects; the expressed desires

of the deceased; and a presumption in favor of allowing the maximum participation by everyone wishing to pay respects to the deceased.

In deciding an action brought by a non-relative claiming to have closer personal ties to the deceased than his or her relatives, the court would have to consider at least the desires of the person or persons ready, willing and able to pay the arrangements' costs as well as the expressed desires of the deceased.

The fact that the deceased or any other person had paid or agreed to pay all or part of the cost of the arrangements would not give a person any greater rights to make all decisions regarding the arrangements than he or she otherwise would have had. The bill's provisions could not be construed to void or otherwise affect a gift made pursuant to the Uniform Anatomical Gift Law.

MCL 333.2851

FISCAL IMPLICATIONS:

The House Fiscal Agency says the bill would not affect state budget expenditures, but could have minimal fiscal implications for probate courts. (3-21-94)

ARGUMENTS:

For:

The bill would add to the Public Health Code provisions specifying who would have authority to make decisions regarding the funeral arrangements of someone who has died or to decide where a deceased person's remains could be interred. 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. Occasionally, though, disputes arise among survivors over funeral arrangements, which includes questions about where a deceased person's remains should be interred. 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. The bill would list in order those surviving relatives, starting with a spouse and on

down to first cousins, who would be authorized to make decisions regarding funeral arrangements and where a decedent was to be interred. In addition, the bill would permit a non-relative who felt he or she had a "closer personal affinity" to the deceased than a relative to petition a court for authority to make funeral arrangements. However, in cases where agreement couldn't be reached, the bill includes numerous provisions governing how the dispute would have to be settled in court. Not only would the bill help to reduce the number of such disputes that eventually end up in court, it would provide courts some direction in how to decide them when they couldn't otherwise be resolved by survivors.

For:

The bill includes provisions that would protect a funeral establishment or cemetery, or their owners, agents or employees, from criminal or civil liability when disputes arose among survivors regarding funeral arrangements for the deceased. Oftentimes, these businesses find themselves caught in the middle among bickering survivors and, potentially, may be subject to lawsuits simply because they happened to be chosen to provide funeral arrangements for the deceased or because the deceased was laid to rest in a particular cemetery. Similar liability protections have been adopted in a number of other states, according to a spokesman for the funeral industry.

Against:

While the bill would protect the interests of survivors, whether close relatives or friends, as well as those of funeral establishments and cemeteries, it would fail to ensure that the desires of the deceased regarding his or her funeral rites would be respected. As currently written, the bill would permit a survivor to determine how or where a deceased person's remains were to be disposed of, even if the decedent had a written will with detailed instructions on these matters or had purchased a pre-need funeral contract prior to his or her death. In addition, the bill fails to recognize situations where a person, prior to his or her death, had named a conservator or granted power of attorney over such decisions to someone other than a family member or friend. The bill should be amended to require that any decisions made regarding funeral arrangements and final interment must conform to the will of the deceased, whether these 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.

Against:

Many of the bill's provisions relating to judicial procedures that would have to be followed and detailing a probate court's responsibilities are either contradictory or would be unworkable. For instance, the bill would require a probate court, upon being petitioned, to set a date for a hearing within three business days of the petition's filing date, but would also require notice of the hearing to be served "personally on all persons" listed in the bill. Not only would this be expensive, it couldn't be done in most instances. The bill also fails to designate who would have to serve the notice. Would this be the court's responsibility? Or perhaps the petitioner's? These and other provisions need to be revised and clarified.

POSITIONS:

The Department of Public Health supports the bill. (3-21-94)

The Department of Commerce has no position on the bill but has concerns about it, particularly that it does not ensure that the desires of deceased would be respected. (3-22-94)

The Michigan Funeral Directors Association supports the bill. (3-16-94)

The United Cemeteries of Michigan supports the bill. (3-18-94)

The Michigan Probate Judges Association does not oppose the concept of the bill, but has not yet taken a formal position. (3-21-94)

The Michigan Trial Lawyers Association has no position on the bill. (3-18-94)