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PROVIDE PRIORITY FOR THOSE MAKING ARRANGEMENTS FOR A DECEASED PERSON

House Bill 5831
Sponsor: Rep. Judith Scranton
Committee: Regulatory Affairs

Complete to 5-20-98

A SUMMARY OF HOUSE BILL 5831 AS INTRODUCED 5-7-98

The bill is part of a package of bills that would amend various acts that regulate the cemetery and funeral home industries and that are tie-barred to each other. Public Act 284 of 1996 added provisions to the Public Health Code to specify that someone with authority to make decisions regarding the funeral arrangements of a person who had died and been buried or otherwise interred could request a permit to have the body disinterred over the objections of someone with ownership rights over the present place of interment. House Bill 5831 would further amend the code to clarify who would have authority to make funeral and burial arrangements and to establish procedures for when disputes arise between survivors as to the arrangements for a deceased person. "Arrangements" would be defined as "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.

Unless family and friends knew that the deceased had made funeral and burial arrangements on a preneed basis, persons over the age of 18 would have the right under the bill to make arrangements in the following order of priority:

- * A surviving spouse.
- * A surviving son or daughter.
- * A surviving parent.
- * A surviving brother or sister.
- * A surviving grandchild.
- * A surviving child of a deceased brother or sister.
- * A surviving grandparent.
- * A surviving aunt or uncle.
- * A surviving first cousin.

House Bill 5831 (5-20-98)

The right to make arrangements would be forfeited if a person did not exercise it within 48 hours of being contacted, or if the person could not be located, and the right would fall to the next person on the list. If two or more persons had the same priority, then the majority would have the right to make the arrangements. In case of a dispute as to the arrangements, any person on the list or the provider (a funeral establishment or cemetery and its owners, employees, and agents) who had custody of the body could file a petition in probate court requesting the court to settle the matter. A hearing would have to be held within seven business days, and the bill would specify notice requirements. Providers would not be required to bring an action and would not be civilly or criminally liable for not doing so, and would not have to accept or inter the deceased's remains until the dispute was settled. The estate would have to reimburse a provider for costs incurred in bringing the action if the petition was filed by the provider.

The court, in making its decision, would have to consider the following factors:

- * The expressed desires of the deceased.
- * 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.
- * The convenience and needs of other family and friends of the deceased wishing to pay respects.

Further, a person could also file a petition requesting that he or she be permitted to make the arrangements if the petitioner alleged that it would be a grave injustice to allow those on the list to do so, or that another person not on the priority list had a "closer personal affinity" to the deceased and so should be permitted to make the arrangements. If such a petition was filed, the provider would have to suspend the arrangements authorized by the person who had priority under the bill until the probate court issued an order. The court, in making a decision under such a petition, would have to consider the expressed desires of the deceased and the desires of those ready, willing, and able to pay the costs of the arrangements.

The bill would also establish a protocol for situations in which no survivors exist or can be found. A person would not enjoy any greater rights to make decisions regarding the arrangements for the deceased by paying or agreeing to pay all or part of the cost of the arrangements.

The bill is tie-barred to House Bill 5832, which would amend the Occupational Code; House Bill 5833, which would amend the Cemetery Regulation Act; and House Bill 5834, which would amend the Prepaid Funeral Contract Funding Act.

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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.