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## FUNERAL/BURIAL ARRANGEMENTS; DECISION MAKING PRIORITY

**House Bill 4129**

**Sponsor: Rep. Judith Scranton**

**Committee: Family and Civil Law**

**Complete to 3-2-99**

### **A SUMMARY OF HOUSE BILL 4129 AS INTRODUCED 2-2-99**

Public Act 284 of 1996 added provisions to the Public Health Code regarding the authority of certain individuals to request a permit for the disinterment of a body over the objections of the owner of the place where the body is interred. House Bill 4129 would further amend the code to clarify who would have authority to make funeral and burial arrangements for a deceased person and to establish procedures for when disputes arose between survivors. "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.

More specifically, except in those cases where the persons seeking to arrange for a funeral and final disposition of the body were aware that the deceased had already made funeral and disposition arrangements prior to his or her death, the bill would provide a hierarchy generally giving certain relatives priority to make decisions regarding such arrangements for the deceased. The following individuals, provided they were over the age of 18, would have the right to make such decisions as were needed to arrange for the funeral and disposition of the body 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.

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The right to make arrangements would start with the surviving spouse and if the deceased's spouse was not living, refused to exercise his or her authority within 48 hours, or could not be located, the right would fall to the next group of persons on the list. If no one on the list could be found or, if found, did not exercise his or her authority within 48 hours, then the deceased's personal representative would be authorized to make the necessary funeral and disposition arrangements. The personal representative would also be responsible for attempting to contact the people on the list at each person's last known address.

If the deceased did not have a personal representative, then a "provider" (a funeral establishment or cemetery and its owners, employees, and agents) who was willing to assume the responsibility of making the arrangements could accept instructions from any person who was willing to assume the responsibility for making the arrangements. A provider who acted in good faith and after reasonable diligence would not be liable civilly or criminally for the arrangements provided. A provider could rely upon the information provided by family members and would not be required to contact or independently investigate the existence of any next-of-kin. The priority list would create a rebuttable presumption and could be relied upon by the provider. If no one assumed authority for the arrangements, the provider with custody of the body would have to notify the Department of Community Health.

If two or more persons existed at the same level of priority, then a majority of those persons would have the right to make the arrangements. If a majority of those individuals could not agree upon the arrangements, any person on the list or the provider with custody of the body could file a petition in probate court asking the court to settle the matter. If a provider filed the petition the estate would have to reimburse a provider for costs incurred in bringing the action. However, a provider would not be required to file a petition and would not be civilly or criminally liable for refusing to do so. Further, the provider would not have to accept or inter the deceased's remains until the dispute was settled. The court, in making its decision regarding such a petition, 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.

The probate court could also be petitioned to allow someone other than the person with priority on the list to make arrangements for the deceased. The court could issue an order granting authority to make the arrangements for the deceased to another individual where it would work a grave injustice to allow the one or more of the persons with priority to make the decisions or where another person who was 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 would have to hold a hearing, as described below, and in making its decision, consider at least the expressed desires of the deceased and the desires of those ready, willing, and able to pay the costs of the arrangements.

Although the court would be required to consider the desires of the person or persons who were ready, willing, and able to pay for the costs of the funeral and disposition arrangements, the bill would specify that 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.

Upon receiving a petition to intervene in a dispute or to avoid a grave injustice or allow an unlisted person authority over the arrangements, the probate court would be required to hold a hearing within seven business days. Notice of the hearing would have to be personally served or provided in such a manner that any person on the list would receive notice no less than five days prior to the date of the hearing. The notice would have to include notification of the person’s right to appear at the hearing. Unless the person could not be located after a good faith effort, the notice and petition would have to be served on the person having the highest priority on the list. The probate court could hear the petition immediately, if the person who received notice of the hearing waived his or her rights by filing a written waiver with the court.

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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.