

STORAGE NAME: h1329s1.leps

DATE: April 14, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LAW ENFORCEMENT AND PUBLIC SAFETY
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1329

RELATING TO: Medical Examiners

SPONSOR(S): Committee on Law Enforcement and Public Safety & Rep Roberts-Burke & Others

COMPANION BILL(S): S 0122(s), CS/S 0562(c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) LAW ENFORCEMENT AND PUBLIC SAFETY YEAS 7 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

Under s. 406.11, F.S., the district medical examiner presently has a duty to determine the cause of death, and to perform whatever autopsies or laboratory examinations he/she deems necessary in the public interest.

The bill provides that a medical examiner may not retain or furnish any body part of the deceased without notification and approval of the next of kin unless used in conjunction with the determination of identification or the cause of death of the decedent. Under the bill, a medical examiner may be suspended, reprimanded, or placed on probation for violating this provision of the act, or for negligent performance of the duties required of a medical examiner.

The bill provides that the Medical Commission may temporarily suspend a medical examiner who is unable to carry out his/her duties by reason of the use of alcohol, drugs, narcotics, or any other type of material.

The bill provides that this act shall take effect on July 1, of the year in which enacted.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Grounds for Discipline of Medical Examiners

Section 406.075, F.S., provides that a district or associate medical examiner may be removed or suspended by the Medical Examiners Commission for any of the following:

- (a) Failure to comply with the provisions of Chapter 406, F.S.
- (b) Misuse or misappropriation of public funds or property
- (c) Being found guilty of a crime in any jurisdiction which directly relates to the duties of the district medical examiner or the ability to perform the duties of the medical examiner.
- (d) Disciplinary action against him/her by any state board licensing him/her as a physician
- (e) Having a financial interest in any funeral or transportation service which does business, directly or indirectly, with the office of the district medical examiner.
- (f) A material misrepresentation of his or her education, training, education, or expertise while in his or her capacity as a medical examiner.
- (g) A material misrepresentation of data upon which an opinion or conclusion as a medical examiner is based.

Responsibilities of a Medical Examiner in Performing Examinations

Section 406.11, F.S., authorizes the district medical examiner to determine the cause of death of an individual if the cause of death occurs under any of the circumstances listed in the statute. In addition to determining the cause of death, the medical examiner is to perform examinations he or she deems necessary, or are requested by the state attorney.

The medical examiner also has the authority to “perform, or have performed, whatever autopsies or laboratory examinations he or she deems necessary in the public interest.”
s. 406.11(a), F.S.

Section 406.075, F.S., provides that a medical examiner may be disciplined (even removed) for violating the Medical Commission’s rules.

Next of Kin’s Right to be Notified of Examinations performed on Decedent’s Body

There is currently no statutory requirement that the next of kin be notified before an examination on a dead human body takes place. In fact, there is no definition of “next of kin” in Chapter 406 of the Florida Statutes.

The Florida Supreme Court has upheld the constitutionality of a statute (s. 732.9185, F.S.) that authorizes a medical examiner, at the request of an eye bank, to donate the cornea of a decedent without the notification of the next of kin. However, the medical examiner may not proceed if he/she knows of an objection by the next of kin. State v. Powell, 497 So.2d at 1190 (Fla 1996). The court cited the extreme importance of weighing public interest against the rights of the next of kin and to limit intrusions on a dead body without permission of the next of kin to those instances in which the public interest is the greatest, and the impact on the next of kin is the least. Id.

Likewise, the court has asked the legislature to address this policy question and balance the needs of society with the individual concerns of the next of kin. Id.

Rights of Next of Kin to Control Use of Decedent's Body

The Supreme Court of Florida has specifically noted that the next of kin have no property right in the remains of a decedent. However, the next of kin do have a limited right to possess the body for burial purpose. Id.

Florida is one of the few states that adhere to the Impact Doctrine. This requires some degree of physical injury to the plaintiff before recovery is possible in tort actions. However, under Florida Law, the absence of physical impact does not bar a claim for the negligent mishandling of a dead body. Gonzalez v. Metropolitan Dade County Public Health Trust, 651 So.2d 673 (Fla. 1995).

In situations where the decedent's next of kin has specifically requested that the body not be used for research purposes, the court has determined that the family member had a right to recover, in tort, for the willful, wanton, and malicious actions of the medical examiner in proceeding despite the objection. Kirker v. Orange County, 519 So.2d 682 (Fla.App 5 Dist. 1988).

What happens to unclaimed bodies?

After a certain period of time, unclaimed bodies are sent, after determination of death, to the State of Florida Anatomical Board (located at the University of Florida Health Science Center). After forty-eight hours elapses, the body may be used for medical research purposes, and then cremated. ss. 245.06, 245.07, F.S.

B. EFFECT OF PROPOSED CHANGES:

The bill amends **s. 406.11, F.S.**, to provide that a medical examiner may not retain or furnish any body part of the deceased without notification and approval of the next of kin unless used in conjunction with the determination of identification or the cause of death of the decedent. Under the bill, a medical examiner may be suspended, reprimanded, or placed on probation for violating this provision of the act, or for negligent performance of the duties required of a medical examiner (amending **ss. 406.06, 406.075, F.S.**).

The bill amends **s. 406.06, F.S.**, to provide that the Medical Commission may temporarily suspend a medical examiner who is unable to carry out his/her duties by reason of the use of alcohol, drugs, narcotics, or any other type of material.

Thus, under the bill, if the medical examiner wishes to removing a decedent's body part for research purposes, he/she would be required to notify the next of kin to obtain approval. If the medical examiner fails to do so, he/she can be disciplined by the Medical Examiners Commission.

The bill provides that this act shall take effect July 1, of the year in which enacted.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Ss. 406.06, 406.075, 406.11, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: The bill amends **s. 406.06, F.S.**, to provide that the Governor may suspend a medical examiner for either a violation of 406.11, F.S., or for being unable to carry out the duties of a medical examiner by reason of the use of alcohol, drugs, narcotics, chemicals, or any other type of material.

Section 2: The bill amends **s. 406.075, F.S.**, to provide that a medical examiner may be disciplined for a violation of s. 406.11, F.S., or negligently performing the duties required of a medical examiner.

Section 3: The bill amends **s. 406.11, F.S.**, to provide that a medical examiner must notify and receive approval of the next of kin in order to retain or furnish any body part of a decedent unless used in conjunction with a determination of identification or cause of death.

Section 4: The bill provides that this act shall take effect on July 1, of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision does not apply.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce state tax shared with counties and municipalities.

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V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Amendments 01 and 02 were adopted on April 14, 1998, and the changes are reflected herein.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

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