

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1490

H.P. 1095

House of Representatives, April 14, 2011

An Act To Amend the Laws Regarding Custody of the Remains of Deceased Persons

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative CAIN of Orono.
Cosponsored by Senator RECTOR of Knox and
Representatives: CUSHING of Hampden, DAVIS of Sangerville, FREDETTE of Newport,
PRIEST of Brunswick, TUTTLE of Sanford, WAGNER of Lewiston, Senator: ALFOND of
Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 22 MRSA §2843-A, sub-§2**, as amended by PL 2009, c. 601, §29, is
3 further amended to read:

4 **2. Custody and control generally.** The custody and control of the remains of
5 deceased residents of this State, dead bodies or dead human bodies are governed by the
6 following provisions: in the following order of priority:

7 A. If the subject has designated a person to have custody and control in a written and
8 signed document, custody and control belong to that person;

9 B. If the subject has not left a written and signed document designating a person to
10 have custody and control, or if the person designated by the subject refuses custody
11 and control, custody and control belong to the next of kin; and

12 C. If the next of kin is 2 or more persons with the same relationship to the subject,
13 the majority of the next of kin have custody and control. If the next of kin can not, by
14 majority vote, make a decision regarding the subject's remains, the court shall make
15 the decision upon petition under subsection 4, paragraph D.

16 If a person who has the right of custody and control under this subsection does not
17 exercise the rights and responsibilities of custody and control within 2 days of
18 notification of the death of the subject or within 4 days of the death, whichever is sooner,
19 or is unwilling to assume liability for the cost of final disposition of the remains if
20 resources from the estate of the subject are insufficient, custody and control belong to a
21 person from the next lower level of priority as established in paragraphs A to C.

22 A person who has been charged with murder, as described in Title 17-A, section 201, or
23 manslaughter, as described in Title 17-A, section 203, subsection 1, paragraph B, forfeits
24 the right of custody and control provided under this subsection and a funeral director who
25 is aware of the charges may not release a dead body to that person. If the charges against
26 the person are dismissed or the person is acquitted of the charges, the person regains the
27 right of custody and control in the same position of priority established in this subsection.

28 **Sec. 2. 22 MRSA §2843-A, sub-§8**, as enacted by PL 1993, c. 609, §1, is
29 amended to read:

30 **8. Immunity.** A party who, in good faith, acts upon the instructions of the party
31 having custody and control is not liable for having carried out those instructions, may not
32 be held civilly or criminally liable and is not subject to disciplinary action for acting in
33 accordance with those instructions.

34 **Sec. 3. 22 MRSA §2843-A, sub-§10** is enacted to read:

35 **10. Funeral directors.** The following provisions apply to the actions and liability of
36 funeral directors, cemeteries and crematories, and their employees.

37 A. If there is a dispute regarding custody and control, a funeral director may refuse
38 to accept a dead body, inter or otherwise dispose of the remains or complete funeral

1 arrangements until the funeral director is provided with a court order under
2 subsection 4 or a written agreement of the persons who have custody and control.

3 B. If there is a dispute regarding custody and control, pending a court determination
4 under subsection 4 a funeral director who has physical possession of a dead body
5 may embalm or refrigerate and shelter the body and may bill the estate of the subject
6 for those costs, plus attorney's fees and court costs.

7 C. A person who signs a funeral service agreement, cremation authorization form or
8 other authorization for disposition of a dead body is deemed to warrant the
9 truthfulness of the facts set forth in the document, including but not limited to the
10 existence of custody and control and the identity of the subject.

11 D. A funeral director, cemetery or crematory may rely on a funeral service
12 agreement, cremation authorization form or other authorization signed by a person
13 who has custody and control of a dead body and may carry out the instructions
14 provided for in the agreement or on the form or authorization unless the director,
15 cemetery or crematory knows of objections from another person.

16 E. A funeral director, cemetery or crematory is not required to independently
17 investigate custody and control of a dead body or who is next of kin.

18 **SUMMARY**

19 This bill establishes an order of priority for the custody and control of the remains of
20 a deceased person. If a person has been charged with murder or the type of manslaughter
21 in which the person intentionally or knowingly causes the death of another, that person
22 forfeits the right to custody and control of the remains of a deceased person. Upon the
23 dismissal of the charges or acquittal of the person, the person resumes the position of
24 priority granted under the law. The bill authorizes certain actions by funeral directors,
25 cemeteries and crematories, including sheltering the remains during the pendency of a
26 dispute over custody and control, and provides certain protections to funeral directors,
27 cemeteries and crematories.