

Bill as Introduced

SENATE BILL ***136-LOCAL***

AN ACT relative to interment of dead bodies.

SPONSORS: Sen. Fraser, Dist 4; Sen. Blaisdell, Dist 10; Rep. Arnold, Hills 20

COMMITTEE: Judiciary

ANALYSIS

This bill allows an immediate family member to be responsible for a dead body and to transfer such body for burial or cremation. Current law requires a funeral director, or designee, to be responsible for a dead body.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Seven

AN ACT relative to interment of dead.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Reference Change. Amend RSA 290:1-b to read as follows:

2 290:1-b Pronouncement of Death by Registered Nurses. If an anticipated death occurs in a
3 hospital, a nursing home, a private home served by a home health care provider licensed under RSA
4 151, or a hospice, the registered nurse attending at the last sickness may pronounce the person
5 dead and release the body ~~[to the funeral director]~~ **in accordance with RSA 290:11** after having
6 signed the death certificate on the designated line. If a contagious disease is known to be present at
7 the time of death, that fact shall be indicated on the death certificate in accordance with rules
8 adopted by the division of public health services, department of health and human services as
9 provided in RSA 126:2.

10 2 Transfer of Dead Body. RSA 290:11 is repealed and reenacted to read as follows:

11 290:11 Release; Transfer of Body.

12 I. A dead body of a human being may be released or transferred from any residence,
13 hospital, or other facility only to an immediate family member or to a funeral director, or designee.
14 The person to whom the dead body is released shall be responsible for the completion of forms as
15 required by RSA 290:12.

16 II. The body of any deceased person may be transferred to another town for preparation or
17 for burial or cremation in accordance with paragraph I, provided that death was not sudden, or the
18 result of violence, and provided that such body shall be returned to the town in which death
19 occurred within 36 hours, or a permit for permanent removal, as required by this chapter, has been
20 secured within that time. The person responsible for the body shall obtain a permit to transfer the
21 body for burial or cremation.

22 3 By Whom. Amend RSA 290:12 to read as follows:

23 290:12 ~~[By Whom]~~ **Information Supplied by Person Responsible for Transfer.** Such
24 transfer shall be made ~~[under the direction of a funeral director]~~ **in accordance with RSA 290:11,**
25 and ~~[he or his representative]~~ **the person responsible for the body** shall leave with the institution
26 from which or the person from whom such body is received, on forms supplied by the department of
27 health and human services~~[- division of public health services]~~, the name of the funeral director **if**
28 **the body will be transferred to a funeral director**, the name of the person making the transfer~~[-~~
29 ~~his]~~ **and the person's** address, the funeral director's license number **if appropriate**, and the date
30 and hour such body was delivered to ~~[him]~~ **the person responsible or the funeral director.**

31 4 Effective Date. This act shall take effect 60 days after its passage.

Committee Minutes

Date: February 5, 1997
Time: 11:53 am
Room: SH 103

The Senate Committee on Judiciary held a hearing on the following:

SB 0136 relative to interment of dead bodies.

Members of Committee present:

- Senator Podles
- Senator Gordon
- Senator D. Wheeler
- Senator Squires
- Senator Pignatelli
- Senator Hollingworth
- Senator Cohen
- Senator Francoeur

The Chair, Senator Eleanor P. Podles, opened the hearing.

Senator Leo W. Fraser, Jr., D. 4: For the record, I'm Senator Leo Fraser and I represent District 4. I'd like to...I'm bringing to you this morning Senate Bill 136. It would broaden the current statute so far as releasing of dead bodies. Under the current law today, Madam Chairman, only funeral directors or funeral directors' designees could take custody of a body from... if the person died under certain circumstances at a hospital, there's a whole plethora of places where that body...when that person's deceased where only the funeral director or funeral directors' designee could take custody of the body.

My recollection is, Madam Chair, is that over the last several years we've had this bill before, but I'm not sure. I know that we've had similar bills. And, under those prior bills what was happening was that people would introduce legislation and it really would suggest that anybody could take possession of a body, a dead body, under these circumstances. Needless to say, the funeral directors violently opposed that legislation on any number of occasions because of the fact that they have to be licensed to perform these responsibilities, and under some of the laws that had been proposed over the years anyone could have taken custody.

So, it's kind of like, as a matter of fact, I sponsored the bill on behalf of the funeral directors. And, what they had suggested that they would support legislation that would allow not only funeral directors or the funeral directors' designees, but members of the immediate family to take custody of a body for burial or for cremation or whatever. That's what this bill is all about, Madam Chairman.

One of the concerns...the Hospital Association got in touch with me yesterday over concern about the definition of "immediate family." And, I think that they will speak to that issue today. Really, there is not much more to say about the bill. The funeral director of my hometown, who someday is going to take possession of my body, is sitting in the audience this morning. Representatives of the funeral directors association is sitting out there. If you have any further questions I'm sure that they, I'll try to answer them, but if I can't there are other people here that could.

Senator Eleanor Podles, D. 16: I'm just wondering if there's a liability when that person takes over that body, is responsible for that body...

Senator Leo W. Fraser, Jr., D. 4: I hadn't thought about it in that. Let me see. Conceivably there could be. Let's assume hypothetically that one member of the immediate family took possession. In all likelihood if something went wrong maybe other members of the immediate family could hold them with some negligence. I don't know, Madam Chair. I never thought of it in that vein. I do know that the funeral directors over the last several years have been resisting this whole effort and that's why they were asking me to introduce the bill on their behalf.

Senator Eleanor Podles, D. 16: You have others who are going to be speaking. Someone who is against the bill also. So, we'll ask that question at the end. Senator Blaisdell.

Senator Clesson J. Blaisdell, D. 10: Madam Chairman, members of the Committee. I was asked to co-sponsor this bill by Funeral Director Bob Difuzio (sp?) in the city of Keene. I know they looked for other sponsors but they felt that Fraser and I would be the most closest to use this... So, I really think it's a problem and I would hope that this Committee would take a hard look at it. If there's some opposition, any amendments certainly I'd be responsive to. But, again, I don't have much time left so I figure you'd better take care of this if you can. I'd appreciate it.

Senator Beverly A. Hollingworth, D. 23: You can't leave yet, Junie. I have a question for you.

Senator Clesson J. Blaisdell, D. 10: You would!

Senator Beverly A. Hollingworth, D. 23: Senator Blaisdell, you're sure that it wasn't in the intent of your family to save a few dollars when they wanted you to introduce this bill?

Senator Clesson J. Blaisdell, D. 10: (laughter) Geez. Boy, I'll tell you. I'll tell you. I have a lot of respect for this place. I'll tell you. I feel like Rodney Dangerfield ever time I come before this place. No respect. Thank you, Senator. It was very nice of you. Now, I'm going to go eat because Junie's a diabetic.

Senator Eleanor Podles, D. 16: Suzanne Amidon.

Suzanne Amidon/New Hampshire Hospital Association, General Counsel: Thank you, Madam Chairman. My name is Suzanne Amidon. I'm general counsel for the New Hampshire Hospital Association which represents the state hospitals and some specialty care facilities. And, I'm here to speak in opposition to Senate Bill 136. (See Attachment A)

As Senator Fraser indicated, the bill allows the release of a body to a "family member," but nowhere does it delineate to whom. That means that hospitals, nursing homes, and other facilities must determine which family member should receive the body. Is it the spouse? Is

it a parent? Is it one of two or three adult children, and if so which one and how is that designated?

But, perhaps more importantly the bill creates absolutely no safeguards for infection control which the Chairwoman referred to. Funeral directors are trained for the appropriate handling and disposal of infectious bodily fluids. Family members are not. And, we believe that this bill could raise numerous public safety issues.

If hospitals were required to release bodies under this legislation, we would hope that you would consider building an immunity clause for health care facilities to hold them harmless from any claims arising from allegations regarding release to inappropriate families members or any illnesses or damages resulting from release. And we would urge you to vote this legislation inexpedient to legislate.

Senator Eleanor Podles, D. 16: There should be... Isn't it true that there should be concern for disposal of that contagious waste? They don't say anything about that.

S. Amidon: That is one of our concerns. Absent any discussion of that, the hospitals could conceivably be held liable and there could be a public safety issue. I understand that a representative from the funeral directors is here. They perhaps can address more technical issues involved, what has to be done with the remains. But, I can't answer that question, but we are concerned about the public safety issue.

Senator Eleanor Podles, D. 16: So the New Hampshire Hospital Association is against the bill?

S. Amidon: That's correct.

Senator Eleanor Podles, D. 16: Questions...

Senator James W. Squires, D. 12: Ms. Amidon. I didn't follow the initial presentation. What problem is this bill trying to fix?

S. Amidon: This bill has some history as Senator Fraser indicated. And, I really... what I do know of it, is that there is some concern about the charges may be assessed for handling bodies. When, for example, a family may want a home wake, the transportation at this point has to be done by a funeral director or his designee. I think that's part of the concern, but perhaps the sponsors could address that a little more for your benefit.

Senator James W. Squires, D. 12: Does the present situation prevent a home wake?

S. Amidon: It doesn't prevent a home wake. I believe it has to do with the transportation and handling of the body.

Senator Eleanor Podles, D. 16: Further questions from the Committee? Senator Hollingworth.

Senator Beverly A. Hollingworth, D. 23: Ms. Amidon. In other states, what's happened?

S. Amidon: To be honest, I can't tell you.

Senator Eleanor Podles, D. 16: Further questions? Thank you. Anyone else who would like to testify for or against Senate Bill 136? All right.

Representative Tom Arnold, Hillsboro D. 20: Good afternoon, Madam Chairman, Senators. My name is Tom Arnold. I represent Hillsboro 20, the towns of Brookline, Mason and Greenville. I guess I'm a little confused because I'd like to answer all of the questions that have been asked and still like to say what I started off to say.

My reasons for supporting this and a similar bill a year ago were pretty simple. I think that people who have family members who for whatever reason, or people who belong to religious groups who believe that it's desirable for the family to dispose of the body should be allowed to do so. I just don't think we should impose the state's right to regulate such things where regulation is unnecessary. The funeral directors understand and agree with me that this is not an attempt to divest them of their jobs or something of that nature. It will be rarely used.

To answer your question, Senator, in the State of Maine they introduced this a few years ago. They've had very few uses of it, but it started off virtually unknown as most laws do. As it became more used it's interesting that the funeral directors have volunteered to serve as deputy city clerks in order to issue permits to move bodies at night when the city clerks office is closed. They have worked very well with it. It is few people. There are some people in that State that want to inter bodies in the family plot. They're much more common than they are in this state. There are others who take them to a crematorium. But, those are the two basic uses of it.

To address the question of infection, I think most responsible hospitals, and that's assuming death is in a hospital, would caution the person about infection and probably package the body in... it may be just a body bag...but, something that's relatively impervious to body fluids.

I know the picture is conjured up by many people of "Joe" driving down the street, a body in the back of his pickup. I do not think that is a likely event. That has not, to the best of my knowledge, occurred in the state of Maine where as I say this has been in successful use for a few years now.

Again, my purpose is only to insure that family and religious groups that have a conviction that they want to do this should not be precluded from doing it. There was one other question that I remember I wanted to answer and I've forgotten what it was.

Senator Eleanor Podles, D. 16: You'll get it again, I'm sure.

Rep. Arnold: I'll certainly try.

Senator Eleanor Podles, D. 16: Senator Squires.

Senator James W. Squires, D. 12: Representative Arnold, hi.

Rep. Arnold: Good afternoon.

Senator James W. Squires, D. 12: Tom. There is an increasing number and a trend clearly that says that death takes place outside the hospital. In fact, death in the hospital is becoming somewhat unusual with hospice and home care and so forth. I don't think the issue of infection and contagion is a straw one. I think it's real.

I wonder how a family at home who has taken care of an HIV patient is going to be able to make the decision at this point in time this individual or bodily fluids are or are not infectious and what to do. It's a particular concern because increasing numbers of HIV

patients have tuberculosis which is resistant to treatment and highly contagious. So, what safeguards do you think are necessary to make sure that the body is not, in fact, improperly removed from the home with some issues being therefore raised in regard to public health.

Rep. Arnold: Okay. This does not change any of the existing requirements, any of the permits required, any of the contagion information. None of it is changed, only the person who is permitted to transport the body. And the corollary to your question is right now these people are taking care of the patient while he is alive, they presumably have had some cautioning about how to do that, and in the case you cite the danger of transfer of bodily fluids. And, they may, but it's unlikely that they will, elect to take care of the body themselves. It's a very small minority that does this.

Senator Eleanor Podles, D. 16: You said there was a bill last year. Obviously, it got killed. Now, could you tell us did it happen in the Senate or did it happen in the House? Could you tell us a little bit about the bill, last year's bill?

Rep. Arnold: Surely. I'm a real helpful chap. Last year's bill...

Senator Eleanor Podles, D. 16: It's the same?

Rep. Arnold: Very similar. The goals were the same.

Senator Eleanor Podles, D. 16: And, who sponsored this bill last year? It's House Bill 1415, information for the Committee. It's a little different.

Rep. Arnold: That's why I said the goals were the same.

Senator Eleanor Podles, D. 16: What happened? It got killed. What committee?

Rep. Arnold: Health and Human Resource, I believe. The committee of referral is on the front of that bill. I believe that's who it was.

Senator Eleanor Podles, D. 16: Right.

Rep. Arnold: The...last year, the funeral directors opposed it, but they have... You know, I'd like to say they came around to the right way of thinking. What's actually happened is we've agreed that a bill that was written to do this job but didn't have danger of other things happening was the right way to do it. I guess I also want to correct something that Senator Fraser said. He said that the funeral director who was going to take possession of his body was in the audience. And, I've got to inform you people, that depends on which one of them dies first. He made an assumption.

You know, it's a subject...and the point of that remark is that this doesn't come up very often. It comes up once or twice in a person's lifetime. And most people are going to engage a funeral director. A relatively small portion are for either religious or deeply held personal beliefs going to want to transport a body themselves. This doesn't change the permitting required. It doesn't change the controls the state exercises.

But, another corollary to Senator Squires' comment is if a body dies, if a person dies in the home and the body is lying there. What on earth changes the controls on the people in the home from 5 minutes before he died until 5 minutes after he died? And the answer is we can pass laws until we're blue in the face and we aren't going to change what really happens in that instance.

Senator Eleanor Podles, D. 16: I was thinking of the criminal destruction of evidence, too. I mean if it was a crime...

Rep. Arnold: Same permits. Still required.

Senator Eleanor Podles, D. 16: And, wouldn't that person be liable in any case, it doesn't have to be a crime, but doing the wrong thing with the body?

Rep. Arnold: Once again, we're not changing any of the permitting or the controls, merely who can transport it.

Senator Eleanor Podles, D. 16: Transporting it is a big deal. I wouldn't want to transport a body, really.

Rep. Arnold: Most people would not, Senator, but it's also...

Senator Eleanor Podles, D. 16: I mean. Where do you put that body? You have a car, where do you put the body?

Rep. Arnold: Well, in my pick up... No. Obviously...

Senator Eleanor Podles, D. 16: It's not funny, really.

Rep. Arnold: Well, it's comical, but it's serious too. I think you would probably want to have a truck or a van to transport a body. And, I think the vast majority would be transporting it to a crematorium today. Some, to a family, small cemetery, not family necessarily, but small cemetery. I don't think that you're going to find the city of Manchester suddenly running around everybody renting a truck at U-Haul in order to carry a body somewhere. You're quite right in your feeling that most people would not want the duty or the job.

Senator Eleanor Podles, D. 16: Further questions from the Committee? There are no further questions and we thank you. Anyone else who would like to testify on Senate Bill 136?

Dave Pollard/Funeral Directors' Association, Executive Director: Good morning. Madam Chairman, members of the Committee. I'm Dave Pollard, Executive Director of the Funeral Directors' Association. I'm a practicing funeral director. My funeral homes are in Pittsfield, Senator Fraser's hometown. I guess probably he just made a pre-arrangement this morning.

Any technical question...First, let me give you a little history. This is the fourth time we've been in on a bill similar to this, most of the time in the House and most of the time introduced by someone else. Our concern has been and will always be an unlicensed person performing this duty for profit. We have to have a license in order to do it and charge money and we feel that anybody else that does it and charges money should also have to be licensed.

In this case, this is a compromise and we're going to try to put this thing to bed. This is four times now and the last time it was barely defeated in committee. It almost went before the full House. It's a compromise. Representative Arnold's correct. It's going to happen very seldom. It is permitted now in Maine. It's permitted in Vermont. It happens less than a half dozen times a year in either state. You mentioned a pick-up truck driving down the road - that's happened. It always is a news story when it happens, however it is permitted in both those other states. It's not going happen often.

Liability-wise, which was one of your questions, obviously the family is assuming any liability that might occur should they take care of their own deceased member. The family, as defined in our statutes, the 325 statutes, is very well defined who is an immediate family member. It's listed down in order as to who's next of kin and so forth and so on.

The hospitals...I understand their concern and I would think that they could have some kind of form... we have to sign a form when we go to a hospital and remove a body now, and I would think they could come up with some kind of form that absolves them from any liability to whoever they are releasing this body from, this body to. The same as they do now when they release it to a funeral home. I don't think that's a major problem.

Disease and contagion that you mentioned is also a concern, has been a concern of ours. We are trained and licensed, obviously, to handle these bodies properly. Most people that are involved with a home situation have worked with visiting nurses and have worked with the hospice nurses or whoever has been assisting them in taking care of this person. And, they would probably be as well aware of how the body should be handled as to the cause of death as anybody else. So, we don't think that would be a big problem either.

We really would like just to see this language included to permit the family member. We're talking about individual rights, here. This has been their argument the past three times they've proposed the legislation. And, if we've had it included, we don't think it would be a major problem. And it would eliminate the need for any more of these bills being introduced session after session. I'd be happy to answer any technical questions or any questions that you might have.

Senator Eleanor Podles, D. 16: We have none. We thank you. Anyone else who would like to testify on Senate Bill 136? I see none and I'm going to close the hearing on Senate Bill 136.

Hearing adjourned at 12:15pm.

ATTACHMENTS:

A. Testimony from New Hampshire Hospital Association

Speakers

Date February 5, 1997

Time 11:30am

SENATE

JUDICIARY

COMMITTEE

**PUBLIC HEARING
ON**

Senate Bill 136-L

An Act relative to the interment of dead bodies.

APPEARING IN FAVOR: (Please Print)

CHECK
IF YOU
WISH TO
SPEAK

NAME

ADDRESS

REPRESENTING

Senator Fraser

Senator Blaisdell

APPEARING IN OPPOSITION: (Please Print)

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NAME

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REPRESENTING

Suzanne Amidon

Concord

NH Hospital Assn

Testimony



**TESTIMONY IN OPPOSITION TO SB 136,
RELATIVE TO INTERMENT OF THE DEAD**

February 5, 1997

Good morning, Madam Chairman and members of the committee. My name is Gina Balkus and I am vice president of the New Hampshire Hospital Association, which represents the state's hospitals. I'm here to speak in opposition to SB 136.

This bill allows the release of a body to a family, but nowhere does it delineate to whom. That means that hospitals and nursing homes must determine which family should receive the body. Is it a spouse? Is it a parent? Or one of the three or four adult children, and is so, which one?

Secondly, this bill creates absolutely no safeguards for infection control. Funeral directors are trained for the appropriate handling and disposal of infectious bodily fluids. Family members are not. We believe this bill raises numerous public safety issues.

If hospitals were required to release bodies in this manner, we hope the legislature would build in an immunity clause for healthcare facilities to hold them harmless from any claims arising from allegations regarding release to inappropriate family members or any illnesses or damages resulting from release.

I urge you to find this legislation inexpedient to legislate.

MMS \ Medical Management Services

February 5, 1997

Senator Eleanor Podles
Chair
Senate Judiciary Committee
State House Room 103
Concord, New Hampshire 03301

Dear Senator Podles:

I am writing to you as the representative of the New Hampshire Health Care Association which represents the private nursing facilities in the state.


The NHHCA takes no position on the merits of SB 136-LOCAL. However, if it is the desire of the Senate Judiciary Committee to pass this bill, then the NHHCA asks that you clarify the bill in one respect. Specifically, the NHHCA requests that you amend line 13 of the bill.

The existing statute RSA 290:11 permits the body to be released only to "a *funeral director or his designee*." SB 136-LOCAL allows the body to be released to "a funeral director, or designee." Perhaps this was an attempt to make the bill gender neutral, but the result would be to allow the body to be released to someone other than a member of the immediate family or the funeral director.

The NHHCA suggests that you amend this section of the bill with the following language: "**A dead body of a human being may be released or transferred from any residence, hospital, or other facility only to an immediate family member or to a funeral director, or a designee of the funeral director.**" This change would eliminate the ambiguity of who may act as the designee.

Thank you for your consideration of this request. I would be available to assist you if you have any questions or concerns.

Sincerely yours,


David W. Minnis
Lobbyist, NHHCA

cc: Members of Senate Judiciary Committee

Committee Report

Date: February 5, 1997

Time: 11:53 a.m.

The Senate Committee on Judiciary held its hearing in Room 103 SH, Concord, New Hampshire.

BILL NO.: SB 136

TITLE: relative to interment of dead bodies.

Members of the Committee present:

Senator Podles
Senator Gordon
Senator D. Wheeler
Senator Squires
Senator Pignatelli
Senator Hollingworth
Senator Cohen
Senator Francoeur

Those appearing in favor:

Name and Address

Representing

See Attached.

Those appearing in opposition:

Name and Address

Representing

See Attached.

REPORT OF THE COMMITTEE:

- | | |
|--|--|
| <input type="checkbox"/> Ought to Pass | <input type="checkbox"/> Interim Study |
| <input type="checkbox"/> Ought to Pass w/ Amendment | <input type="checkbox"/> Continued Hearing |
| <input checked="" type="checkbox"/> Inexpedient to Legislate | <input type="checkbox"/> Postponed Hearing |
| <input type="checkbox"/> Rereferred | |

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: February 13, 1997

THE COMMITTEE ON Judiciary

to which was referred Senate Bill SB 0136-L

AN ACT relative to interment of dead bodies.

VOTE: 8 - 0

Having considered the same, report the same with the following resolution:
Resolved, that it is: **INEXPEDIENT TO LEGISLATE.**

Senator Debora B. Pignatelli
For the Committee

Date: November 12, 1997

Time: 9:30 a.m.

The Senate Committee on Judiciary held its Executive Session in State House Room 103, Concord, New Hampshire.

BILL NO.: SB 136

TITLE: relative to interment of dead bodies.

Members of the Committee present:

Senator Eleanor P. Podles, Chair
Senator Edward Marshall Gordon, Vice Chair
Senator James Squires
Senator Debora Pignatelli
Senator David Wheeler
Senator Burt Cohen
Senator Beverly Hollingworth
Senator Gary Francoeur

Those appearing in favor:

Name and Address

Representing

See Attached.

Those appearing in opposition:

Name and Address

Representing

See Attached.

REPORT OF THE COMMITTEE:

- | | |
|--|--|
| <input type="checkbox"/> Ought to Pass | <input type="checkbox"/> Interim Study |
| <input type="checkbox"/> Ought to Pass w/ Amendment | <input type="checkbox"/> Continued Hearing |
| <input checked="" type="checkbox"/> Inexpedient to Legislate | <input type="checkbox"/> Postponed Hearing |
| <input type="checkbox"/> Rereferred | |

EPP:sfd
11/13/97