

## **BILL ANALYSIS**

C.S.H.B. 1009  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

CSHB 1009 outlines a process for a decedent's family to provide for informed consent to an autopsy. The bill would require that a decedent's relative be given an opportunity to consent to the autopsy through a plain language form that provides an opportunity for the family to place restrictions on the autopsy as well as control the disposition of organs and tissues after the procedure. The bill would also allow a decedent's family to request that a physician not affiliated with the institution where their family member died review the autopsy, or perform the autopsy at another hospital or institution.

### **RULEMAKING AUTHORITY**

CSHB 1009 does not expressly delegate rulemaking authority to any state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. Entitles the Act as the Jerry Carswell Memorial Act.

SECTION 2. Creates a new subchapter to Chapter 49, Code of Criminal Procedure, that prescribes certain consent procedures and disclosures relating to an autopsy. The requirements prescribed by the subchapter do not apply to autopsies ordered by the Texas Department of Criminal Justice, a justice of peace or medical examiner. The bill prohibits a physician from performing an autopsy without the written informed consent of a decedent's spouse, guardian, adult child, parent, or adult sibling. If a physician is unable to obtain the required informed consent, the physician may, as authorized by a medical examiner, justice of the peace, or county judge, perform an autopsy not less than 24 hours and not more than 48 hours from the time of death or the time the physician took possession of the body.

The bill identifies the persons authorized to provide consent to an autopsy to include, in priority order, a decedent's spouse, guardian, adult children, parents, and adult siblings. The bill provides that if there is more than one guardian, adult child, parent, or adult sibling entitled to give consent, consent may be given by a member of the class unless that member knows of an objection by another member. If an objection is known, consent may be given only by a majority of the members of the class that are reasonably available. The bill provides that an authorized person may not give consent if a person of higher priority is reasonably available to give consent to the autopsy.

The bill requires that consent to an autopsy be provided through a standard written form prescribed by the commissioner of state health services in consultation with the Texas Medical Board. The consent form must:

- include the name of the hospital or other institution and the department that will perform the autopsy;

- include a statement that the removal and retention of organs, fluids, prosthetic devices, or tissue may be required for the purposes of comprehensive evaluation or accurate determination of a cause of death;
- provide the decedent's family an opportunity to place restrictions or special limitations on the autopsy;
- include a separate section regarding the disposition of organs, fluids, and prosthetic devices, and tissues after the autopsy including a prioritized list of persons authorized to control that disposition as provided by the Revised Uniform Anatomical Gift Act;
- allow for documented and witnessed consent,
- allow for the provision of authorization for the release of remains to a funeral home or individual designated by the person providing consent;
- include information regarding the consentor's right to a nonaffiliated physician to review the autopsy, or perform the autopsy at another hospital;
- include a list of circumstances under which a medical examiner is required to conduct an investigation;
- include a statement that the consent form is required by state law; and
- be written in plain language designed to be easily understood by the average person.

The bill allows a decedent's spouse, guardian, adult child, parent, or adult sibling to request that a physician not affiliated with the hospital or other institution where the decedent died review the autopsy, or perform the autopsy at another hospital or institution. The bill requires that a representative of the hospital or other institution inform the person authorized to provide consent to an autopsy of that person's right to request the review of an autopsy, or the performance of the autopsy at another hospital or institution, by a nonaffiliated physician, before that person consents to the autopsy. The bill specifies that a person requesting a nonaffiliated physician to review or perform an autopsy shall bear the additional costs incurred as a result of the nonaffiliated physician's review or performance of the autopsy.

SECTION 3. Amends §501.055(d), Government Code to make a conforming change.

SECTION 4. Repeals Article 49.13, Code of Criminal Procedure, which specifies a list of persons authorized to provide consent to an autopsy.

SECTION 5. Implementation language requiring that the Department of State Health Services prescribe the written consent form required by the Act no later than 31 December 2011. This section further requires that a physician is not required to comply with the Act's requirements until 1 January 2012.

SECTION 6. SECTIONS 3 and 4 of the Act take effect on 1 January 2012. The remaining portions of the Act take effect on 1 September 2011.

### **EFFECTIVE DATE**

SECTIONS 3 and 4 of the Act take effect on 1 January 2012. The remaining portions of the Act take effect on 1 September 2011.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

SECTION 2 of the committee substitute expands the content required for the autopsy consent form to include a statement that the removal and retention of organs fluids prosthetic devices, or tissue may be required for the purpose of comprehensive evaluation or accurate determination of a cause of death. The committee substitute includes the requirement that the consent form allow for the provision of authorization for the release of remains to a funeral home or individual designated by the person providing consent. Further, the committee substitute requires that the separate section regarding the disposition of organs and tissues after the autopsy also contemplate the disposition of fluids and prosthetic devices.

SECTION 2 of the committee substitute clarifies certain provisions relating to a person authorized to provide consent to an autopsy's right to a nonaffiliated physician. The original version allowed a person to request a nonaffiliated physician to attend or perform the autopsy. The committee substitute allows a person to request a nonaffiliated physician to review or perform the autopsy at another hospital or institution.