

SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 1694

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03/16/2015	910	Author added Saxhaug
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A bill for an act

1.1 relating to public safety; providing for religious objections to autopsies in
 1.2 certain cases; amending Minnesota Statutes 2014, sections 390.005, by adding
 1.3 a subdivision; 390.11, subdivisions 1, 2, by adding a subdivision; 390.32,
 1.4 subdivisions 2, 3.
 1.5

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2014, section 390.005, is amended by adding a
 1.8 subdivision to read:

1.9 Subd. 6. **Communicating with family during a death investigation.** Every
 1.10 coroner or medical examiner in office on or after July 1, 2015, shall maintain and make
 1.11 publicly available, a statement of policy or principles to be used for communicating with
 1.12 families during a death investigation.

1.13 Sec. 2. Minnesota Statutes 2014, section 390.11, subdivision 1, is amended to read:

1.14 Subdivision 1. **Reports of death.** All sudden or unexpected deaths and all deaths
 1.15 that may be due entirely or in part to any factor other than natural disease processes
 1.16 must be promptly reported to the coroner or medical examiner for evaluation. Sufficient
 1.17 information must be provided to the coroner or medical examiner. Reportable deaths
 1.18 include, but are not limited to:

1.19 (1) unnatural deaths, including violent deaths arising from homicide, suicide, or
 1.20 accident;

1.21 (2) deaths due to a fire or associated with burns or chemical, electrical, or radiation
 1.22 injury;

1.23 (3) unexplained or unexpected perinatal and postpartum maternal deaths;

1.24 (4) deaths under suspicious, unusual, or unexpected circumstances;

- 2.1 (5) deaths of persons whose bodies are to be cremated or otherwise disposed of so
2.2 that the bodies will later be unavailable for examination;
- 2.3 (6) deaths of inmates of public institutions and persons in custody of law
2.4 enforcement officers who have not been hospitalized primarily for organic disease;
- 2.5 (7) deaths that occur during, in association with, or as the result of diagnostic,
2.6 therapeutic, or anesthetic procedures;
- 2.7 (8) deaths due to culpable neglect;
- 2.8 (9) stillbirths of 20 weeks or longer gestation unattended by a physician;
- 2.9 (10) sudden deaths of persons not affected by recognizable disease;
- 2.10 (11) unexpected deaths of persons notwithstanding a history of underlying disease;
- 2.11 (12) deaths in which a fracture of a major bone such as a femur, humerus, or tibia
2.12 has occurred within the past six months;
- 2.13 (13) deaths unattended by a physician occurring outside of a licensed health care
2.14 facility or licensed residential hospice program;
- 2.15 (14) deaths of persons not seen by their physician within 120 days of demise;
- 2.16 (15) deaths of persons occurring in an emergency department;
- 2.17 (16) stillbirths or deaths of newborn infants in which there has been maternal use of
2.18 or exposure to unprescribed controlled substances including street drugs or in which there
2.19 is history or evidence of maternal trauma;
- 2.20 (17) unexpected deaths of children;
- 2.21 (18) solid organ donors;
- 2.22 (19) unidentified bodies;
- 2.23 (20) skeletonized remains;
- 2.24 (21) deaths occurring within 24 hours of arrival at a health care facility if death
2.25 is unexpected;
- 2.26 (22) deaths associated with the decedent's employment;
- 2.27 (23) deaths of nonregistered hospice patients or patients in nonlicensed hospice
2.28 programs; and
- 2.29 (24) deaths attributable to acts of terrorism.

2.30 The coroner or medical examiner shall determine the extent of the coroner's or medical
2.31 examiner's investigation, including whether additional investigation is needed by the
2.32 coroner or medical examiner, jurisdiction is assumed, or an autopsy will be performed,
2.33 ~~notwithstanding any other statute~~ subject to subdivision 2b.

2.34 Sec. 3. Minnesota Statutes 2014, section 390.11, subdivision 2, is amended to read:

3.1 Subd. 2. **Autopsies.** Subject to subdivision 2b, the coroner or medical examiner
 3.2 may order an autopsy, at the coroner or medical examiner's sole discretion, in the case of
 3.3 any human death referred to in subdivision 1, when, in the judgment of the coroner or
 3.4 medical examiner the public interest would be served by an autopsy. The autopsy shall
 3.5 be performed without unnecessary delay. A report of the facts developed by the autopsy
 3.6 and findings of the person performing the autopsy shall be made promptly and filed in
 3.7 the office of the coroner or medical examiner. When further investigation is deemed
 3.8 advisable, a copy of the report shall be delivered to the county attorney. Every autopsy
 3.9 performed pursuant to this subdivision shall, whenever practical, be performed in the
 3.10 county morgue. Nothing herein shall require the coroner or medical examiner to order an
 3.11 autopsy upon the body of a deceased person if the person died of known or ascertainable
 3.12 causes or had been under the care of a licensed physician immediately prior to death or if
 3.13 the coroner or medical examiner determines the autopsy to be unnecessary.

3.14 Autopsies performed pursuant to this subdivision may include the removal,
 3.15 retention, testing, or use of organs, parts of organs, fluids or tissues, at the discretion of
 3.16 the coroner or medical examiner, when removal, retention, testing, or use may be useful
 3.17 in determining or confirming the cause of death, mechanism of death, manner of death,
 3.18 identification of the deceased, presence of disease or injury, or preservation of evidence.
 3.19 Such tissue retained by the coroner or medical examiner pursuant to this subdivision shall
 3.20 be disposed of in accordance with standard biohazardous hospital or surgical material and
 3.21 does not require specific consent or notification of the legal next of kin. When removal,
 3.22 retention, testing, and use of organs, parts of organs, fluids, or tissues is deemed beneficial,
 3.23 and is done only for research or the advancement of medical knowledge and progress,
 3.24 written consent or documented oral consent shall be obtained from the legal next of kin, if
 3.25 any, of the deceased person prior to the removal, retention, testing, or use.

3.26 Sec. 4. Minnesota Statutes 2014, section 390.11, is amended by adding a subdivision to
 3.27 read:

3.28 Subd. 2b. **Religious objections to autopsy.** (a) For purposes of this subdivision:

3.29 (1) "compelling state interest" means that:

3.30 (i) the autopsy is necessary to investigation of a suspicious death or suspected crime;

3.31 (ii) the autopsy is necessary to prevent a potential public health threat and essential
 3.32 to ascertain the cause or manner of death;

3.33 (iii) the autopsy is necessary to ascertain the cause or manner of death following
 3.34 an unexpected death, regardless of the decedent's underlying disease, in order to protect
 3.35 the public's health;

- 4.1 (iv) the autopsy is necessary to obtain proper toxicologic or other specimens that
4.2 may represent evidence of a crime and may deteriorate over time;
- 4.3 (v) the death is an unexpected and unexplained death of a child;
- 4.4 (vi) the death is associated with police action;
- 4.5 (vii) the death is unnatural, unattended, or unexpected and occurred within a facility
4.6 licensed by the Department of Corrections, a secure treatment facility, as defined in section
4.7 246.71, subdivision 5, or within a facility as defined in section 626.5572, subdivision 6, but
4.8 excluding deaths that occurred in the home of the decedent or a caregiver of the decedent;
- 4.9 (viii) the death is due to acute workplace injury;
- 4.10 (ix) the death is caused by apparent electrocution;
- 4.11 (x) the death is caused by unwitnessed or suspected drowning;
- 4.12 (xi) the body is unidentified and the autopsy may aid in identification;
- 4.13 (xii) the body is skeletonized but not subject to the provisions of section 307.08;
- 4.14 (xiii) the death appears to be caused by fire or explosion; or
- 4.15 (xiv) the need for an autopsy is otherwise established under paragraph (g);
- 4.16 (2) "religious beliefs" means the recognized tenets, understandings, customs, or
4.17 rites of any culture or recognized religion as they apply to activities described in section
4.18 149A.01, subdivision 3, paragraph (b);
- 4.19 (3) "religious grounds" means that performance of an autopsy is contrary to the
4.20 religious beliefs of the decedent or the decedent included a religious objection to an
4.21 autopsy in the decedent's health care directive; and
- 4.22 (4) "representative of the decedent" or "representative" means the person or persons
4.23 with the right to control and duty of disposition of the body of the decedent under section
4.24 149A.80, subdivision 2.
- 4.25 (b) The coroner or medical examiner shall, as soon as possible, but no more than
4.26 24 hours after the discovery of the decedent's body, exercise good faith efforts to give
4.27 verbal or written notice to the representative of the decedent of the intended autopsy.
4.28 This verbal or written notice must include providing written materials explaining the
4.29 death investigation process or providing the representative the office's Web site address
4.30 where this information is located. These written materials and Web site must include
4.31 information regarding Minnesota's law concerning religious objections to autopsies. A
4.32 record summarizing verbal communication with a representative must be maintained
4.33 indefinitely in the coroner or medical examiner's records. If, despite a good faith effort, a
4.34 representative of the decedent cannot be found within 24 hours of the discovery of the
4.35 decedent's body, the autopsy may proceed without further delay.

5.1 (c) If the representative of the decedent does not object to the autopsy on religious
5.2 grounds, the autopsy may be performed without delay.

5.3 (d) If the representative of the decedent objects to the autopsy on religious grounds,
5.4 an autopsy must not be performed unless the coroner or medical examiner determines
5.5 that there is a compelling state interest to perform the autopsy. The coroner or medical
5.6 examiner may require a representative of the decedent or a person representing a class
5.7 of representatives to present an affidavit stating the person's relationship to the decedent,
5.8 any religious affiliation of the decedent, that the decedent had a religious objection to an
5.9 autopsy and the basis for that belief, and that the person will assume responsibility for the
5.10 lawful disposition of the body of the deceased.

5.11 (e) If the coroner or medical examiner determines that a compelling state interest to
5.12 perform an autopsy exists under paragraph (a), clause (1), items (i) to (xiii), the autopsy
5.13 may proceed without further delay.

5.14 (f) The district court may waive the waiting period under paragraph (b) upon ex
5.15 parte motion if it determines that the delay may prejudice the accuracy of the autopsy
5.16 or threaten public health.

5.17 (g) If the coroner or medical examiner determines that there is a compelling state
5.18 interest to perform an autopsy under circumstances not described in paragraph (a), clause
5.19 (1), items (i) to (xiii), and the representative of the decedent objects based on religious
5.20 grounds and submits written information to the coroner or medical examiner showing
5.21 reason to believe that the autopsy is contrary to the religious beliefs of the decedent, the
5.22 coroner or medical examiner may bring an action in district court for an order authorizing
5.23 the autopsy. The action must be brought by notice of an order to show cause served on the
5.24 representative of the decedent or, if the representative is not available, on another party if
5.25 directed by the court. The proceeding must be determined summarily upon the petition
5.26 and the oral or written evidence offered by the parties. The court shall grant the relief
5.27 sought in the petition if it finds that the petitioner demonstrates by a preponderance of
5.28 the evidence that the autopsy is necessary and that need outweighs the state's interest in
5.29 observing the decedent's religious beliefs. If the petition is denied and no stay is granted
5.30 by the court, the body must immediately be released in accordance with chapter 149A.

5.31 (h) Autopsies performed after a religious objection under this subdivision must be
5.32 the least intrusive procedure consistent with the state's compelling interest in performing
5.33 the autopsy. This subdivision does not prohibit a coroner or medical examiner from
5.34 obtaining voluntary permission from a representative of the decedent to conduct an
5.35 examination and inquiry involving less intrusive means than an autopsy.

6.1 (i) A coroner or medical examiner is not liable for the failure to perform an autopsy
6.2 if an objection to the autopsy on religious grounds has been made under this subdivision.

6.3 (j) In a court proceeding related to this subdivision, the petitioner may file data that
6.4 are investigative data under section 13.83, subdivision 4, under seal with the court. The
6.5 data must be examined by the court in camera. The investigative data filed with the court
6.6 remain confidential consistent with the provisions of section 13.83, subdivision 4, except
6.7 where disclosure is ordered as provided by section 13.83, subdivision 7.

6.8 (k) Actions or determinations by the coroner or medical examiner under this
6.9 subdivision are exempt from chapter 14.

6.10 Sec. 5. Minnesota Statutes 2014, section 390.32, subdivision 2, is amended to read:

6.11 Subd. 2. ~~Violent or mysterious deaths; Autopsies.~~ Subject to section 390.11,
6.12 subdivision 2b, the medical examiner may conduct an autopsy in the case of any human
6.13 death of any type referred to in subdivision 1, clause (1) or (2), ~~when in the judgment of the~~
6.14 ~~medical examiner the public interest requires an autopsy~~ or in section 390.11, subdivision 1.

6.15 Sec. 6. Minnesota Statutes 2014, section 390.32, subdivision 3, is amended to read:

6.16 Subd. 3. **Other deaths; autopsies; exhumation consent.** Subject to section 390.11,
6.17 subdivision 2b, the medical examiner may conduct an autopsy in the case of any human
6.18 death of any type referred to in subdivision 1, clause (3) or (4), or may exhume any human
6.19 body and perform an autopsy in the case of any human death of any type referred to in
6.20 subdivision 1 when in the judgment of the medical examiner the public interest requires an
6.21 autopsy. No such autopsy on an exhumed body shall be conducted unless the surviving
6.22 spouse, or next of kin if there is no surviving spouse, consents, or unless the district court
6.23 of the county where the body is located or buried, upon notice as the court directs, enters
6.24 its order authorizing an autopsy or an exhumation and autopsy. Application for an order
6.25 may be made by the medical examiner or the county attorney of the county where the body
6.26 is located or buried, upon a showing that the court deems appropriate.