



Lisa Sandberg

Bill Analysis
Legislative Service Commission

Sub. H.B. 235*

126th General Assembly
(As Reported by S. Judiciary on Civil Justice)

Reps. Wagner, Distel, Flowers, Harwood, Kearns, McGregor, Seitz, Wolpert, Willamowski, Barrett, Blessing, Chandler, Coley, Collier, Combs, Domenick, D. Evans, Fende, Gibbs, Hoops, Hughes, Law, Perry, Raussen, Reidelbach, Schaffer, Schneider, Taylor, Uecker

BILL SUMMARY

- Excludes, except in certain circumstances, preliminary autopsy and investigative notes and findings, and photographs of a decedent, made by the coroner or anyone acting under the coroner's direction or supervision and suicide notes in coroner's records from being public records and includes as public records the detailed descriptions of the observations written during the progress of an autopsy and the conclusions drawn from those observations that are filed in the office of the coroner.
- Permits coroners to hire deputy coroners as independent contractors.
- Requires the State Medical Board to adopt a rule including a coroner's investigator among the individuals competent to recite the facts of a deceased person's medical condition to a physician so the physician may pronounce the person dead without personal examination.
- Requires a coroner's certification of death in certain cases, prohibits physicians not acting as coroners from certifying the cause of death that does not occur under natural circumstances, makes related changes in the Death and Fetal Death Certificate Law, and provides criminal penalties for certain violations.
- Authorizes a coroner to submit evidence to the Bureau of Criminal Identification and Investigation for help in determining whether a death

* *This analysis was prepared before the report of the Senate Judiciary on Civil Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

resulted from criminal activity and requires the Bureau to assist in the evaluation of that evidence.

- Requires the coroner to provide any photograph or suicide note to the representative of the estate of a decedent if there is no surviving person who may make a written request as next of kin for the photograph or suicide note or if all next of kin of the decedent have died without making a request.
- Allows a journalist or an insurer to submit a written request to the coroner to view certain specified information under certain specified circumstances.
- Generally prohibits the coroner from removing any specimens, except for a DNA specimen, from the body of a deceased person if the coroner has reason to believe that the autopsy is contrary to the deceased person's religious beliefs.
- Allows "interested persons" to view an autopsy of a decedent without the person receiving permission to view the autopsy from the decedent's next of kin, but prohibits a person under the age of 18 who is not an "interested person" from viewing an autopsy.
- Includes among the list of unfair and deceptive acts or practices in the business of insurance the disclosing of a coroner's records by an insurer in violation of the law.
- Defines "autopsy" for purposes of the Coroner's Law.
- Precludes causes of actions against coroner office employees for requesting, ordering, or performing an autopsy in good faith under authority of the Coroner's Law.
- Eliminates the prohibition against a coroner practicing as an attorney in this state.

TABLE OF CONTENTS

County coroners.....	3
Coroner's records as public records.....	3
Existing law.....	3
Operation of the bill.....	4



Deputy coroners, investigators, and other employees of a coroner	6
Deputy coroners.....	6
Clerks and other personnel.....	7
Investigator's assistance in pronouncing death.....	7
Certification of cause of death.....	7
Existing law.....	7
Operation of the bill	8
BCII assistance.....	9
Autopsy provisions	9
Definition of autopsy	9
Medical waste	9
Performance of autopsies by deputy coroners.....	10
Cause of action preclusion	10
Persons who may view an autopsy.....	10
Sheriff or coroner as attorney.....	10
Unfair and deceptive acts or practices in the insurance business	11

CONTENT AND OPERATION

County coroners

Coroners are elected county officials who are licensed physicians and must be notified when a person dies in any suspicious or unusual manner or suddenly when in apparent good health, by criminal or other violent means, by suicide, by sudden infant death syndrome, or by casualty (hereinafter referred to as "nonnatural deaths"). The coroner, or any person the coroner designates, then can take charge of the dead body and may perform an autopsy. The coroner must determine the cause of death, both medically and legally. A dead body in the coroner's custody must be held until the coroner, after consultation with the appropriate law enforcement official, decides it is no longer necessary to hold the body. (R.C. 313.01, 313.02, 313.12, 313.121, 313.13, 313.131, and 313.15--not in the bill.)

Coroner's records as public records

Existing law

Existing law declares the coroner's records (those made personally by the coroner or by someone acting under the coroner's direction or supervision) to be public records. If the coroner, a deputy coroner, or the representative of either requests to inspect and receive a copy of a deceased person's medical or psychiatric records (e.g., from a physician or hospital), those records while in the coroner's office's possession are *not* public records. (R.C. 313.091--not in the bill; R.C. 313.10.)



Under current law, the coroner's office must provide a copy of a public record to anyone who requests it in writing and pays a "transcript" fee of 15¢ per 100 words, but not less than \$1 (R.C. 313.10).

Operation of the bill

The bill, except as provided in R.C. 313.10(D) and (E) described below, *excludes* the following, if in a coroner's office, from being public records: preliminary autopsy and investigative notes and findings made by the coroner or anyone acting under the coroner's direction or supervision; photographs of a decedent made by the coroner or anyone acting under the coroner's direction or supervision; suicide notes; and medical and psychiatric records obtained under R.C. 313.091 (also excluded under existing law) (R.C. 313.10(A)(2)).

However, the coroner must provide any photograph or suicide note in the coroner's records to any of the following persons who makes a written request as next of kin of a decedent who is the subject of the photograph or suicide note (R.C. 313.10(C)(1)):

(1) The surviving spouse;

(2) If there is no surviving spouse, or if the surviving spouse has died without having requested the photograph or suicide note, any child of the decedent over 18 years of age, with each such child having an independent right to make the request;

(3) If there is no surviving spouse or child over 18, or if the surviving spouse and all children over 18 have died without having made a request, the parents of the decedent, with each parent having an independent right to make a request;

(4) If there is no surviving spouse, child over 18, or parent of the decedent, or if all have died without having made a request, the siblings of the decedent, whether of the whole or the half blood, with each having an independent right to make a request.

The bill provides that if there is no surviving person who may make a written request as next of kin for a photograph or suicide note, or if all next of kin of the decedent have died without having made a request, the coroner must provide any photograph or suicide note in the coroner's records to the representative of the estate of a decedent who is the subject of the photograph or suicide note upon written request made by the representative (R.C. 313.10(C)(2)).

The bill allows a journalist to submit to the coroner a written request to view preliminary autopsy and investigative notes and findings, suicide notes, or

photographs of the decedent made by the coroner or by anyone acting under the coroner's discretion or supervision. The request must include the journalist's name and title and the name and address of the journalist's employer and state that the granting of the request would be in the best interest of the public. If a journalist submits a written request to the coroner, the coroner must grant that request. The journalist is prohibited from copying the preliminary autopsy and investigative notes and findings, suicide notes, or photographs of the decedent. (R.C. 313.10(D).)

The bill also allows an insurer to submit to the coroner a written request to view the full and complete records of the coroner with respect to a deceased person. The request must include the name of the deceased person, the type of policy to which the written request relates, and the name and address of the insurer. The full and complete records include, but are not limited to, the following (R.C. 313.10(E)(1)): (1) the detailed descriptions of the observations written by the coroner or by anyone acting under the coroner's direction or supervision during the progress of an autopsy and the conclusions drawn from those observations that are filed in the office of the coroner, (2) preliminary autopsy and investigative notes and findings made by the coroner or by anyone acting under the coroner's direction or supervision, (3) photographs of the decedent made by the coroner or by anyone acting under the coroner's direction or supervision, (4) suicide notes, and (5) medical and psychiatric records provided to the coroner, a deputy coroner, or a representative of the coroner or deputy coroner.

If an insurer submits a written request to the coroner to view the records described in (1) through (5) of the preceding paragraph, the coroner must grant that request (R.C. 313.10(E)(2)). Upon the granting of the written request by the coroner, the insurer may utilize the records described in (1) through (5) of the preceding paragraph for the following purposes (R.C. 313.10(E)(3)): (1) to investigate any first party claim or third party claim asserted under a policy of insurance issued by the insurer that arises from the death of the deceased person, (2) to determine coverage for any first party claim or third party claim asserted under a policy of insurance issued by the insurer that arises from the death of the deceased person, and (3) to determine the insurer's liability for any first party claim or third party claim asserted under a policy of insurance issued by the insurer that arises from the death of the deceased person.

The bill states that, prior to the delivery of records to an insurer under the provisions described above, the coroner may require the insurer who submitted the written request for the records to provide a payment to the coroner of a record retrieval and copying fee at the rate of 25¢ per page or a minimum fee of \$1 (R.C. 313.10(E)(4)).

Under the bill, any records produced by the coroner in response to a written request by an insurer must remain in the care, custody, and control of the insurer and its employees or representatives at all times. The insurer may not release or disclose the records to any other person unless any of the following apply (R.C. 313.10(E)(5)): (1) the release of the records is reasonably necessary to further a purpose described in R.C. 313.10(E)(3), (2) a court of competent jurisdiction orders the insurer to produce the records, (3) the insurer is required to produce the records in response of a civil or criminal subpoena, or (4) the insurer is responding to a request for the records from a law enforcement agency, the Department of Insurance or a department of insurance from another state, or another governmental authority.

The bill permits the coroner to contact the decedent's next of kin to inform the next of kin that a journalist or an insurer has submitted a written request and whether the coroner has granted the journalist's or the insurer's request (R.C. 313.10(F)).

In addition, the coroner, in his or her discretion, may allow the use of the photographs of a decedent for medical, legal, or educational purposes (R.C. 313.10(A)(3)).

The bill explicitly *includes* as a public record the detailed descriptions of the observations written during the progress of an autopsy and the conclusions drawn from those observations filed in the coroner's office (R.C. 313.10(A)(1)).

The bill redesignates the transcript fee as a "record retrieval and copying" fee and changes the fee to 25¢ per page or a minimum of \$1 (R.C. 313.10(B)).

Deputy coroners, investigators, and other employees of a coroner

Deputy coroners

Existing law permits the coroner to appoint (hire as a county employee) deputy coroners (who must be licensed physicians), pathologists (as deputy coroners), and any necessary technicians. The bill permits a coroner to contract, without competitive bidding, for the services of deputy coroners. It also specifically provides that pathologists "serving as deputy coroners" and "technicians" must receive salaries fixed by the coroner and payable from the county treasury and that the coroner may appoint as such employees a person who is an associate or employee of the coroner or deputy coroner in private practice. The bill also permits pathologists appointed as deputy coroners to perform autopsies. (R.C. 313.05 and 325.17.)

Clerks and other personnel

Some, but not all, counties maintain a coroner's office, laboratory, and morgue, and current law specifically permits the coroners of these counties to appoint clerks, custodians, and investigators and to prescribe their duties. (The coroner of any county may hire an official stenographer.) The bill permits any coroner, regardless of whether the county maintains a coroner's office, laboratory, or morgue, to employ such personnel. (R.C. 313.05(A)(3).)

Investigator's assistance in pronouncing death

Under existing law, the State Medical Board must adopt rules to establish standards to be met and procedures to be followed by a physician with respect to the delegation of the performance of a medical task to a person who is not licensed or otherwise specifically authorized by the Revised Code to perform the task. A current Medical Board rule permits a physician to pronounce death without personally examining a body if a competent observer listed in the rule recites the facts of the decedent's present medical condition to the physician and the physician is satisfied that death has occurred. The list of competent observers currently includes physicians, registered nurses, licensed practical nurses, EMTs, paramedics, physician assistants, chiropractors, and podiatrists--if they have a current license or certificate issued under Ohio law. The bill requires the Medical Board to add to this list coroner's investigators, who are not required by the Coroner's Law to be holders of a medical license or certificate. (R.C. 4731.053(B); O.A.C. Rule 4731-14-01.)

Certification of cause of death

Existing law

Under existing law, the funeral director or other person in charge of the final disposition of the remains in each human death (including fetal deaths) occurring in Ohio must register that death with the local registrar of vital statistics of the district where the death occurred. The funeral director or that other person then must present the death certificate to "the physician or coroner" for certification of the cause of death (in this context, the physician apparently means the attending physician of the decedent). The physician or coroner must sign the "medical" death certificate within 48 hours after the death. A coroner generally must satisfy this requirement by signing in the coroner's own hand, but, under certain circumstances, the signing can be accomplished by the coroner using a signature stamp. (R.C. 3705.16.)

Operation of the bill

The bill allows a funeral director or other person in charge of the final disposition of remains to present a death certificate or "fetal death certificate" (added by the bill) to the decedent's attending physician or the coroner, as under existing law, or to the "medical examiner" (see **COMMENT 1**). (R.C. 3705.16(B).)

The bill requires a coroner or a deputy coroner, or a "medical examiner or a deputy medical examiner serving in an equivalent capacity" to a coroner or a deputy coroner, in the county where a nonnatural death or nonnatural fetal death occurs to certify the cause of death unless (1) the death was reported to the coroner, deputy coroner, medical examiner, or deputy medical examiner and (2) that individual, after a preliminary examination, declined to assert jurisdiction with respect to the death or fetal death. A physician other than the coroner in the county where the death or fetal death occurs, or a deputy coroner, medical examiner, or deputy medical examiner serving in an equivalent capacity, may certify the cause of death only when the death occurs under natural circumstances. (R.C. 3705.16(B).)

In a separate provision, the violation of which is a crime, the bill again requires that the coroner of the county in which the death or fetal death occurs, or a deputy coroner, medical examiner, or deputy medical examiner serving in an equivalent capacity, certify the cause of a nonnatural death unless the death was reported to the coroner, deputy coroner, medical examiner, or deputy medical examiner and that person, after a preliminary examination, declined to assert jurisdiction with respect to the death or fetal death. The bill prohibits a physician other than the coroner of the county in which the death or fetal death occurs, or a deputy coroner, medical examiner, or deputy medical examiner serving in an equivalent capacity, from certifying any death or fetal death that occurs under any circumstances other than natural. The bill also prohibits a person, in a case in which the cause of death is nonnatural, from knowingly presenting a death or fetal death certificate for the purpose of obtaining certification of the cause of death to any physician other than the coroner of the county in which the death or fetal death occurs, or to a deputy coroner, medical examiner, or deputy medical examiner in the county serving in an equivalent capacity, unless the death or fetal death was reported to the coroner, deputy coroner, medical examiner, or deputy medical examiner and, after a preliminary examination, that individual declined to assert jurisdiction with respect to the death or fetal death. The penalty for a violation of any of these provisions is a fine of not more than \$1,000, incarceration for a term of not more than one year, or both. (R.C. 3705.29(E), (F), and (G) and 3705.99(B).)

The bill also prohibits a person, with intent to defraud or knowing that the person is facilitating a fraud, from certifying a cause of death or obtaining or attempting to obtain a certification of the cause of death or fetal death in violation of the provisions described in the immediately preceding paragraph. The penalty for these fraud-related crimes is a fine of not more than \$10,000, incarceration for a term of not more than five years, or both. (R.C. 3705.29(H) and 3705.99(A).) (See **COMMENT 2**.)

BCII assistance

The bill authorizes the coroner to submit any evidence gathered during an investigation of a death to the Bureau of Criminal Identification and Investigation (BCII) for assistance in determining whether the death resulted from criminal activity and requires the BCII to assist in the evaluation of the evidence (R.C. 313.08(D)).

Autopsy provisions

Definition of autopsy

Existing law does not contain a definition of "autopsy." The bill defines "autopsy" for use in the Coroner's Law as the external and internal examination of the body of a deceased person, including, but not limited to, gross visual inspection and dissection of the body and its internal organs, photographic or narrative documentation of findings, microscopic, radiological, toxicological, chemical, or other laboratory analyses performed in the discretion of the examining individual upon tissues, organs, blood, other bodily fluids, gases, or any other specimens and the retention for diagnostic and documentary purposes of tissues, organs, blood, other bodily fluids, gases, or any other specimens as the examining individual considers necessary to establish and defend against challenges to the cause and manner of death of the deceased person (R.C. 313.123(A)).

Medical waste

The bill provides that except as described below, retained tissues, organs, blood, other bodily fluids, gases, or any other specimens from an autopsy are medical waste that must be disposed of in accordance with applicable federal and state laws, including the Public Health Council's protocol rules for autopsies adopted under R.C. 313.122 (R.C. 313.123(C)(1)). If an autopsy is performed on a deceased person and, pursuant to the law regarding the procedure when an autopsy is contrary to a decedent's religious beliefs (R.C. 313.131--not in the bill), the coroner has reason to believe that the autopsy is contrary to the deceased person's religious beliefs, the coroner is prohibited from removing any specimens, including, but not limited to, tissues, organs, blood, or other bodily fluids, from the

body of the deceased person unless removing those specimens from the body of the deceased person is a compelling public necessity. Except as described below, if the coroner removes any specimens from the body of the deceased person, the coroner must return the specimens, as soon as is practicable, to the person who has the right to the disposition of the body. The coroner may retain a DNA specimen for diagnostic, evidentiary, or confirmatory purposes. (R.C. 313.123(C)(2) and (3).)

Performance of autopsies by deputy coroners

Existing law states that pathologists appointed as deputy coroners must assist in doing autopsies. The bill authorizes them to perform autopsies. (R.C. 313.05(A)(1).)

Cause of action preclusion

The bill provides that a cause of action does not lie against an employee of a coroner's office for requesting, ordering, or performing an autopsy in good faith under the authority of the Coroner's Law (R.C. 313.123(D)).

Persons who may view an autopsy

Under the bill, the coroner may allow an interested person to view an autopsy of a decedent without the interested person receiving permission to view the decedent's autopsy from the decedent's next of kin (R.C. 313.23(B)). The bill prohibits a person under the age of 18 who is not an interested person from viewing an autopsy (R.C. 313.23(C)). The bill defines an "interested person" as an employee of the coroner's office, a physician, dentist, nurse, professor at a medical school, medical student, medical resident, nursing student, an employee of a recovery agency, a member of a law enforcement agency, or any other person the coroner, in the coroner's discretion, determines is appropriate. "Recovery agency" has the same meaning as in R.C. 2108.01. (R.C. 313.23(A).)

Sheriff or coroner as attorney

The bill eliminates the prohibition in existing law against a coroner practicing as an attorney in any court of the state. However, it prohibits the coroner of a county with a population of more than 175,000 who elects not to engage in the private practice of medicine pursuant to R.C. 325.15 from practicing as an attorney during the period in which the coroner may not engage in the private practice of medicine (see **COMMENT 3**). (R.C. 4705.01.)

Unfair and deceptive acts or practices in the insurance business

Current law specifies many types of conduct that are considered unfair and deceptive acts or practices in the business of insurance. The acts or practices include making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating, or preparing with intent to so use, any statement, pamphlet, circular, article, or literature, which is false as to the financial condition of an insurer and which is calculated to injure any person engaged in the business of insurance; issuing or delivering or permitting agents, officers, or employees to issue or deliver agency company stock or other capital stock or benefit certificates or shares in any common-law corporation or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance; and making or permitting any unfair discrimination among individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract. (R.C. 3901.21.) The bill expands the list of unfair and deceptive acts or practices so that unfair and deceptive acts and practices in the business of insurance also include disclosing a coroner's records by an insurer in violation of R.C. 313.10 (R.C. 3901.21(Z)).

COMMENT

1. The bill refers to medical examiners and deputy medical examiners, but neither existing law nor the bill defines the terms. However, in Summit County, which has an alternative form of county government, the medical examiner performs the functions of the coroner.

2. R.C. 3705.29(H), new in the bill, prohibits the fraudulent certification of a cause of death "in violation of the prohibition of division (E)" of the section. Division (E) *requires* the coroner, deputy coroner, medical examiner, or deputy medical examiner to certify the cause of death in certain cases. It does not explicitly *prohibit* anything, although failure to certify as required might be regarded as an implicit prohibition.

3. R.C. 325.15 provides that a coroner in a county with a population of more than 175,000 may not engage in the private practice of medicine unless, before taking office, the coroner notifies the board of county commissioners of the intention to engage in that private practice. The coroner must elect to engage or not to engage in the private practice of medicine before the commencement of each new term of office. A coroner in a county with a population of more than 175,000 who engages in the private practice of medicine but who intends not to engage in the private practice of medicine during the coroner's next term of office



must so notify the board of county commissioners before the term commences. A coroner who elects not to engage in the private practice of medicine may engage in the private practice of medicine, without any reduction in salary, for six months for the purpose of concluding the affairs of the coroner's private practice.

HISTORY

ACTION	DATE
Introduced	05-03-05
Reported, H. Judiciary	06-14-05
Passed House (89-6)	10-05-05
Reported, S. Judiciary on Civil Justice	---

h0235-rs-126.doc/kl

