

Legislative Analysis



APPOINT PERSONAL REPRESENTATIVE TO SUPERVISE DISPOSITION OF DEAD

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Senate Bill 1244 (Substitute H-1)

Sponsor: Sen. Alan L. Cropsey

House Committee: Judiciary

Senate Committee: Judiciary

First Analysis (8-4-04)

BRIEF SUMMARY: The bill would allow a probate court to appoint a special representative to supervise the disposition of the body of a person who died without a will, without heirs, and without assets sufficient to pay for a funeral or burial.

FISCAL IMPACT: The bill would have no fiscal impact on state or local government.

THE APPARENT PROBLEM:

According to an analysis by the Senate Fiscal Agency, funeral directors and cemetery operators reportedly are unsure of their authority and responsibility in disposing of the remains of a person who dies without a will, heirs, or sufficient assets to pay for funeral services or burial or cremation. Under the Public Health Code and Executive Reorganization Order (ERO) 1997-4, in the absence of any known relative of the deceased or a special administrator of the deceased's estate appointed by the probate court, unclaimed bodies become available to the director of the Department of Community Health for allocation to hospital and educational institutions for use in medical instruction and health sciences education. Apparently, however, these institutions no longer need unclaimed bodies. In addition, probate judges evidently are unclear about their authority to direct the disposition of the remains because the Estates and Protected Individuals Code (EPIC) does not address this situation. It has been suggested that the probate court be authorized to appoint a special personal representative to supervise disposition in these cases.

THE CONTENT OF THE BILL:

The bill would amend the Estates and Protected Individuals Code to allow a court, either on its own motion or on petition by an interested person, to appoint a special personal representative to supervise the disposition of the body of a dead person who died intestate (without a will), without heirs, and with insufficient assets to pay for a funeral or burial. The order of appointment would specify the duties of the special personal representative. Duties could include making arrangements with a funeral home, securing a burial plot if needed, obtaining veteran's or pauper's funding where appropriate, and determining whether to dispose of the body by cremation or burial. The court could waive the bond required of special personal representatives under Section 3601(1)(a) of the code.

Further, the court could appoint the county public administrator if he or she were willing to serve.

(A personal representative typically is a person responsible for administering the estate of a decedent. The code states that "personal representative" includes, but is not limited to, an executor, administrator, successor personal representative, and special personal representative, and any other person who performs substantially the same function under the law governing that person's status. "Interested person" includes, but is not limited to, an heir, devisee, child, spouse, creditor, and beneficiary, and any other person who has a property right in or claim against an estate; a person who has priority for appointment as personal representative; and a fiduciary representing an interested person. The code states that identification of an interested person may vary from time to time and must be determined according to the particular purposes of, and matter involved in, a proceeding, and by the Supreme Court rules.)

HOUSE COMMITTEE ACTION:

The committee adopted a substitute which amended Section 3614 of the Estates and Protected Individuals Code instead of adding a new section as the Senate-passed version would have done. The Senate-passed version would have allowed a court to appoint a personal representative, where the committee version allows a court to appoint a special personal representative. ("Personal representative" may include a "special personal representative", but the code does make some distinctions between the two.)

Other changes include allowing the court to make the appointment on its own motion; specifying the duties of a special personal representative in the order of appointment; including in the duties securing a burial plot and obtaining veteran's or pauper's funding where appropriate; waiving the bond requirement for special personal representatives; and allowing a court to appoint the county public administrator. (Information in this analysis is derived from the Senate Fiscal Agency's analysis dated 6-24-04.)

ARGUMENTS:

For:

The bill would address a confusing situation in which no one has clear authority to dispose of the remains of a person who died without a will, heirs, or sufficient assets to pay for a funeral or burial. By authorizing the probate judges to appoint a special personal representative to oversee the disposition of the remains, the bill would provide a solution to this predicament. Further, since funeral or burial expenses are already accorded a priority among claims against an estate behind the costs of administering the estate and ahead of special allowances, all other claims, and any distribution to heirs if there were any, the bill would not create a new priority.

Against:

Some have expressed a desire to do a more comprehensive review of related issues and amend the bill accordingly to address those broader issues before it moves further along the legislative process.

Response:

There may be other issues that need to be addressed legislatively. However, in the meantime, some areas of the state report having a number of unclaimed bodies needing to be provided for. Therefore, the authority to appoint a special personal representative to plan for the final disposition that the bill would give to probate court judges is needed now. Perhaps these other issues can still be explored now but dealt with in another bill at a later time.

POSITIONS:

A representative of the Michigan Funeral Directors Association indicated support for the bill. (7-14-04)

Legislative Analyst: Susan Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.